

**Data Processing Agreement between the Client (Controller) and AT&C Accountants BV, AT&C Audit BV and AT&C Belastingadviseurs BV (Processor)**

**The Parties:**

the "**Controller**", "**You**" or "**Your**"

and

AT&C Accountants BV, AT&C Audit BV and AT&C Belastingadviseurs BV, having its registered office in Tiel, at Laan van Westroijen 2, hereinafter referred to as the "**Processor**", "**We**", "**Us**" or "**Our**", duly represented in this matter by G.J. van Zuijdam *AA*, director, *drs.* P.H. van der Veen *RA*, director, and *drs.* J.M.J.M. Freriks, director;

hereinafter jointly referred to as the "**Parties**", "**We**" or "**We Jointly**".

**Whereas:**

A. You have engaged Our services (the "**Underlying Engagement**").

In that context, we will process the Personal Data necessary for the performance of the Underlying Engagement.

B. You qualify as a "**Controller**" and We as a "**Processor**" because of the performance of this Underlying Engagement *and* with regard to the Personal Data that We will Process in that context. In this Agreement, We are laying down our mutual rights and obligations.

**Agree as follows:**

## **1. Definitions**

In this Agreement a number of terms are used. The meaning of those terms is clarified below. In this Agreement, the defined terms are capitalised. The definitions of the terms in the list below are generally taken from privacy laws and regulations.

Data Subject:	The person to whom Personal Data pertains.
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 its direct authority.
Subprocessor:	Another processor engaged by the Processor to perform specific processing activities for 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:	Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and 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 relating to criminal convictions and offences or related security measures.
Data Breach / Personal Data Breach:	A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed, or as a result of which the aforementioned consequences cannot reasonably be ruled out.
Third Parties:	Parties other than You and We and Our Employees.
Data Breach Notification Obligation:	The obligation to notify Data Breaches to the Dutch Data Protection Authority and, in some cases, to Data Subject(s).

Employees	Persons working for You or for Us, either on the basis of an employment contract or engaged on a temporary basis.
Underlying Engagement:	The engagement as referred to above in the recitals at A.
Agreement:	This data processing agreement.
Personal Data:	Any information relating to an identified or identifiable natural person ("Data Subject") that is processed in the context of the "Underlying Engagement"; 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	<p>Personal Data which, in the event of loss or unlawful Processing, could lead inter alia to the stigmatisation or exclusion of the Data Subject, damage to health, financial loss or fraud, including identity fraud.</p> <p>These categories of personal data must in any event be understood to include:</p> <ul style="list-style-type: none"> <li>• Special Personal Data;</li> <li>• Data on the Data Subject's financial or economic situation;</li> <li>• (Other) data that may lead to the stigmatisation or exclusion of the Data Subject;</li> <li>• Usernames, passwords and other login details;</li> <li>• Data that may be misused for fraudulent purposes, including identity fraud.</li> </ul>
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 this Regulation. The GDPR has replaced the Personal Data Protection Act ( <i>Wet bescherming persoonsgegevens</i> ) with effect from 25 May 2018.

## **2. Applicability and term**

- 2.1 This Agreement applies to all Processing carried out by Us as a Processor on the basis of the Underlying Engagement provided by You as a Controller.
- 2.2 This Agreement takes effect on the date on which the Underlying Engagement becomes effective and will end at the time that We no longer hold any of the Personal Data Processed by Us for You in the context of the Underlying Engagement. This Agreement may not be terminated prematurely.
- 2.3 Clauses 6 and 7 of this Agreement will continue to be valid even after the Agreement (or the Underlying Engagement) has ended.

## **3. Processing**

- 3.1 We Process the Personal Data only in the manner agreed with You in the Underlying Engagement. We will carry out this Processing only for as long and as extensively as is necessary for the performance of this Underlying Engagement. The Processing will take place as per Your written instructions, unless We are obliged to act differently based on laws or regulations (for example, when considering whether an "unusual transaction" must be reported in the context of the Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financieren van terrorisme* (Wwft))). If, in our opinion, any instructions infringe the GDPR, We will notify You immediately.
- 3.2 The Processing will take place under Your responsibility. We have no control of the purpose and means of Processing and take no decisions about matters such as the use of Personal Data, the retention period of the Personal Data Processed for You and the provision of Personal Data to Third Parties. You must ensure that You have clearly determined the purpose and means of Processing of the Personal Data. We will never have control of the Personal Data. We will abide by any independent obligation We may have based on legal requirements or rules governing professional ethics and conduct applicable to chartered accountants with regard to the Processing of Personal Data. An overview of these rules governing professional ethics and conduct is available on the website of the Netherlands Institute of Chartered Accountants ([www.nba.nl](http://www.nba.nl)).
- 3.3 You have a legal obligation to abide by prevailing privacy laws and regulations. More specifically, You must determine whether there is a lawful basis for the Processing of the Personal Data. We will ensure that We comply with the regulations concerning the Processing of Personal Data applicable to Us as a Processor 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 has been included in Clause 3.5. We will limit the access to Employees for whom such access is necessary for their work, and such access will be limited to the Personal Data that these Employees need for their work. We will furthermore ensure that the Employees who have access to the Personal Data have received accurate and comprehensive instructions about the handling of Personal Data and that they are aware of the responsibilities and legal obligations.
- 3.5 We may engage other processors (Subprocessors) for the performance of certain work ensuing from the Underlying Engagement, for example if these Subprocessors have expert knowledge or means that We do not have at Our disposal. If the result of the engagement of Subprocessors is that they will Process Personal Data, We will impose the obligations from this Agreement (in writing) on those Subprocessors. By signing this Agreement, You give permission to engage Subprocessors. You may refuse to give permission, but in some cases this may mean that We must terminate the Underlying Engagement. We have sole discretion to determine whether any engagement should be terminated for this reason.
- 3.6 In so far as possible, We will provide assistance to You in meeting Your obligations to process requests from Data Subjects for the exercise of rights. If We receive any requests from Data Subjects (directly) for the exercise of their rights (for example access to, or alteration or removal of, Personal Data), We will forward these requests to You. You will process these requests yourself, but of course We may be of help to You in that regard if We have access to these Personal Data in the context of the Underlying Engagement. We may charge costs for this.
- 3.7 We will only Process the Personal Data within the European Economic Area, unless We have made other arrangements with You. We will Jointly lay down these arrangements in writing or email correspondence.
- 3.8 If We receive a request to make Personal Data available, We will only comply if the request was made by a duly competent authority. Moreover, We will first assess whether We believe that the request is binding, or that We must comply with the request on the basis of rules governing professional ethics and conduct. If there are no impediments under criminal law or other legal impediments, We will inform You of the request. We will try to do so in a term short enough to enable You to appeal against the provision of the Personal Data if necessary. If We are permitted to inform You, We will also consult with You about what data We will make available and how.

#### **4. Security measures**

- 4.1 We have implemented security measures. When the security measures were taken, We took account of the risks to be mitigated, the state of the art and the costs of the security measures.

- 4.2 Having properly enquired into the security measures We have taken, You believe that these measures ensure a level of security appropriate to the nature of the Personal Data and the scope, context, purposes and risks of the Processing.
- 4.3 We will inform You if any of the security measures substantially change.
- 4.4 We provide safeguards appropriate to the application of the technical and organisational security measures with regard to the Processing to be carried out. If You wish to commission an inspection of how We comply with the security measures, You may send Us a request to this end. We will make arrangements for this Jointly with You. The costs of an inspection will be borne by You. You will make a copy of the inspection report available to Us.

## **5. Data Breaches**

- 5.1 We will inform You if there is a Data Breach. We strive to do so within 48 hours of discovering this Data Breach, or as soon as possible after having been informed about it by Our Subprocessors. Further arrangements on how We will do this have been included in Clause 11 of this Agreement. We will then provide You with the information reasonably needed by You to – if necessary – submit an accurate and complete notification to the Dutch Data Protection Authority and, if necessary, the Data Subject(s) in the context of the Data Breach Notification Obligation, and/or We will forward the notification from our Subprocessor to You. We will also keep You abreast of the measures implemented by Us, or Our Subprocessor, in response to the Data Breach.
- 5.2 Notifying Data Breaches to the Dutch Data Protection Authority and, if necessary, the Data Subject(s) is always Your own responsibility.
- 5.3 Keeping a register of Data Breaches is always Your own responsibility.

## **6. Duty of confidentiality**

- 6.1 We will keep the Personal Data obtained from You confidential and equally oblige Our Employees and Subprocessors, if any, to observe confidentiality. With regard to the Personal Data entrusted to them, chartered accountants will observe the confidentiality required from them on the basis of the rules governing professional ethics and conduct. An overview of these rules governing professional ethics and conduct is available on the website of the Netherlands Institute of Chartered Accountants ([www.nba.nl](http://www.nba.nl)).

## **7. Liability**

- 7.1 You warrant that the Processing of Personal Data based on this Agreement is not unlawful and does not infringe the rights of any Data Subjects.

- 7.2 We are not liable for any damage resulting from Your non-compliance with the GDPR or other laws and regulations. You also indemnify Us against any Third-Party claims that are based on such damage. The indemnification applies not only to the (material or immaterial) damage incurred by Third Parties, but also to the costs to be incurred by Us in that connection, for example in potential legal proceedings, and the costs of any penalties imposed on Us as a result of Your conduct.
- 7.3 The limitation of Our liability agreed in the Underlying Engagement and the accompanying general terms and conditions has effect with regard to the obligations included in this Agreement, it being understood that one or several claims for damages made under this Agreement and/or the Underlying Engagement can never result in the limitation being exceeded.

## **8. Transferability of the Agreement**

- 8.1 Except when We Jointly agree differently in writing, You and We are not permitted to transfer this Agreement and the rights and duties related to this Agreement to another party.

## **9. Termination and return/destruction of Personal Data**

- 9.1 If the Underlying Engagement is terminated, We will transfer the Personal Data provided to Us by You back to You or – at Your request to Us – destroy them. We will only retain a copy of the Personal Data if We are obliged to do so based on laws or regulations, including professional regulations.
- 9.2 The costs of collecting and transferring Personal Data upon the termination of the Underlying Engagement will be borne by You. The same applies to the costs of destroying the 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 Additions and amendments to this Agreement are only valid if they have been put down in writing. "Written" and "in writing" also include amendments communicated by email followed by approval by email from the other party.
- 10.2 Changes to the Personal Data Processed or to the reliability requirements, privacy regulations or Your requirements may be reason to supplement or amend this Agreement. If this results in significant modifications to the Underlying Engagement, or if We cannot provide an appropriate level of security, this may be reason for Us to terminate the Underlying Engagement.

## **11. Final provisions**

- 11.1 At Your request, We will make available to You all information necessary to demonstrate compliance with the obligations laid down in this Agreement. We will enable audits, including inspections, by You or an auditor authorised by You, and contribute to such audits. The costs of such requests, audits or inspections will be borne by You. Any audits at Our Subprocessors are also chargeable to You.
- 11.2 Upon request, the parties will work together with the supervisory authority in the performance of its duties.
- 11.3 This Agreement is governed by Dutch law. The Dutch courts are competent to examine any disputes ensuing from or related to this Agreement.
- 11.4 This Agreement outranks any other agreements We have concluded with You. Any general terms and conditions used by You do not apply to this Agreement. The provisions from this Agreement prevail over the provisions of Our general terms and conditions, unless express reference is made to a provision of the general terms and conditions.
- 11.5 If one or several provisions of this Agreement turn out to be invalid, this will not have any consequences for the validity of the other provisions of this Agreement. We will then consult with You to Jointly draw up a new provision. This provision will be in the spirit of the invalid provision to the extent possible, but of course written in such a way as to ensure its validity.
- 11.6 Notifications in the context of this Agreement (including notifications in the context of Clause 5 – Data Breaches) will be made by You and Us to the Signatories of this Agreement.

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



**Signatures**

Signed on

by

\_\_\_\_\_  
Client

by

\_\_\_\_\_  
AT&C Accountants BV  
represented by  
G.J. van Zijdam *AA*

by

\_\_\_\_\_  
AT&C Audit BV  
represented by  
*drs.* P.H. van der Veen *RA*

by

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AT&C Belastingadviseurs BV  
represented by  
*drs.* J.M.J.M. Freriks