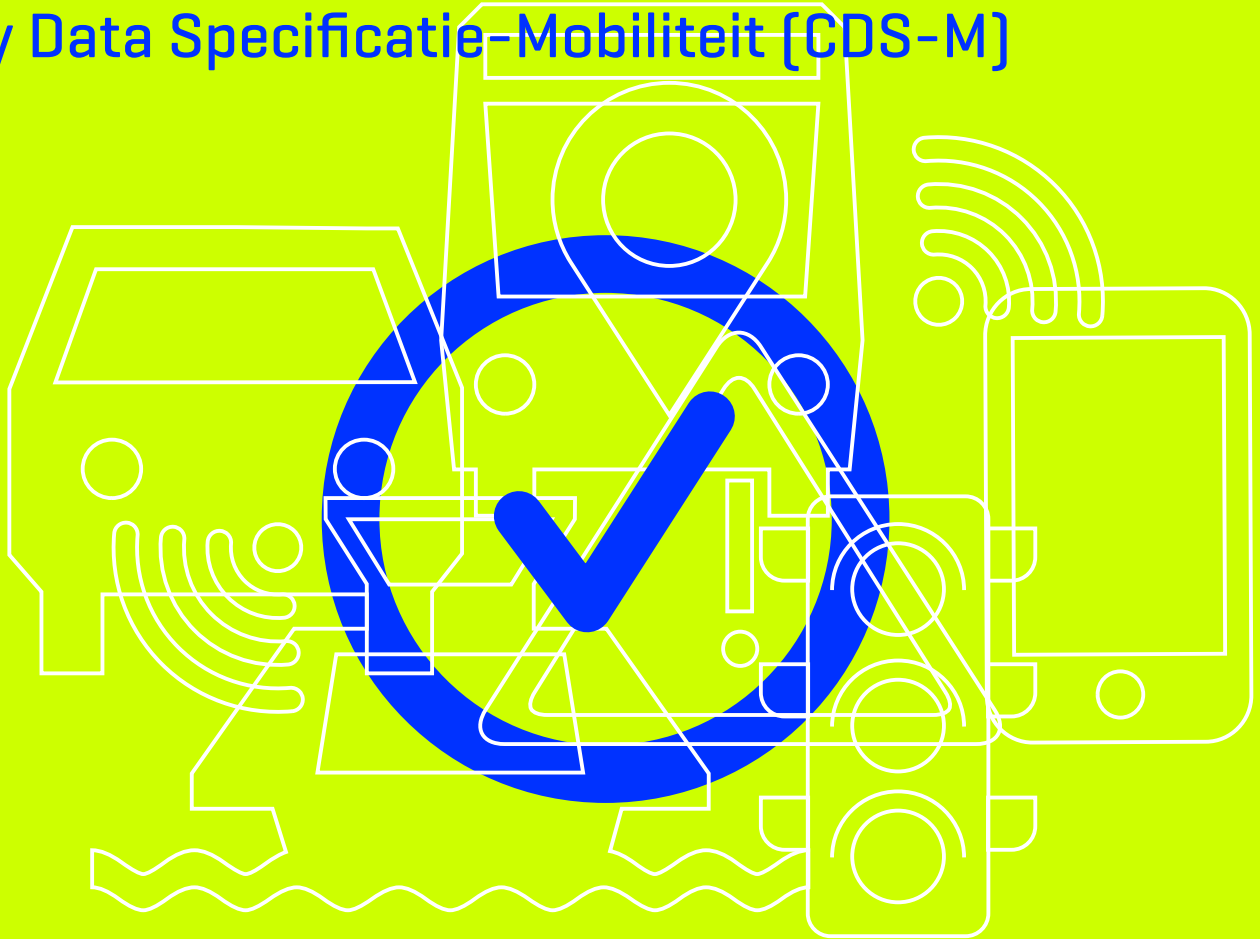


# HANDLEIDING VEILIGE DATA-UITWISSELING DEELMOBILITEIT

City Data Specificatie-Mobiliteit [CDS-M]



## CDS-M

City Data  
Specificatie-Mobiliteit

### VERWERKERSOVEREENKOMST

Met dit voorbeeldcontract worden de afspraken met de mobiliteits-aanbieder over het veilig verwerken van data vastgelegd. Dit is het contract met addendum dat momenteel gebruikt wordt door de gemeente Amsterdam bij projecten rond deelmobiliteit. [Alleen in het Engels]

# CDS-M DATA PROCESSEING AGREEMENT

## THE PARTIES

<.....>

hereinafter: “the Municipality”

and

<.....>

hereinafter: “the Contracting Party”

## WHEREAS:

- a. In the context of the shared mobility policy, the Municipality has granted exemptions to various providers of shared mobility such as shared bicycles, shared scooters, shared cars.
- b. The Contracting Party is an enterprise specialised in processing and analysing mobility data of providers of shared mobility and making it available through the City Standard - Mobility and APIs<sup>1</sup>.
- c. The Contracting Party makes data available from shared mobility providers, pre-processes it, and then processes it according to the conditions of the City Data Standard - Mobility and makes this data accessible to cities using a dashboard. The Contracting Party also conducts additional in-depth analysis so that well-founded analyses can be made.
- d. The Municipality wishes, while respecting the privacy of the consumers of shared mobility, to gain insight into the use and travel movements of shared mobility in Amsterdam for the benefit of future policy choices.

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<sup>1</sup> An API defines the access to the functionality behind it. The outside world does not know the details of the functionality or implementation, but can use the functionality thanks to the API. An advantage of this is that with an API, multiple implementations can be accessed, as long as they comply with the API.

- e. By means of a pilot project, the Municipality wants to examine whether it will be possible to make data from shared mobility providers available using the CDS-M provisions and to present it to the Municipality on a dashboard.
- f. To this end, the Municipality and the Contracting Party have conducted an initial pilot with the data for <.....>.
- g. The first pilot was successful and the Parties have therefore decided to conduct a follow-up pilot for the further development of the dashboard by adding data from multiple shared modes of transport, then aggregate and analyse this data with the intention of determining whether this data can be made applicable for several policy choices for an accessible and liveable city. Research will also be conducted into options to improve privacy by design.
- h. The Municipality has asked the Contracting Party to submit an Offer for the second pilot.
- i. The Contracting Party has responded to the Offer, which also included the Municipality's requirements and prerequisites within which the assignment must be carried out.
- j. In response to the Offer, the Municipality wishes to conclude the below Agreement with the Contracting Party.
- k. This Agreement sets out the mutual rights and obligations between the Parties as they will apply to the implementation of the pilot.

## AND THEREFORE AGREE:

### 1. DEFINITIONS

In this Agreement, a number of terms will be used with a capital letter. The definitions of these terms are established in Article 1 of the *Algemene Inkoopvoorwaarden* [general purchasing terms and conditions]. The terms listed below will also be defined as follows in this Agreement:

Algemene Inkoopvoorwaarden: The *Algemene Inkoopvoorwaarden voor leveringen en diensten* [general purchasing terms and conditions for goods and services] of <.....>.

Offer: The offer submitted by the Contracting Party within the context of this pilot project dated <.....> with reference <.....> in accordance with Appendix <.....> to this Agreement;

Pilot/Assignment: the assignment to be carried out by the Contracting Party as described in Article 2 of the Agreement;

Agreement: this agreement;

Processing Agreement: the agreement concluded by the Municipality with the Contracting Party in connection with the processing of personal data in accordance with the General Data Protection Regulation [GDPR]. It is materialised by Article 7 here below and the Addendum to the Processing Agreement signed by both parties [Appendix 2].

## 2. OBJECT OF THE AGREEMENT

- 2.1 This Pilot relates to further development of the quality of the dashboard by unlocking data about shared mobility from the different providers, improving the quality of the data, and analysing and aggregating this data with the objective of gaining more insight in the use of shared mobility in the City of Amsterdam so it can be used as the basis for future policy choices. Furthermore, the Pilot also includes the further development of the CDS-M vision and the methodology/phased plan for exchanging and analysing data and the way in which the privacy by design can be improved throughout the data chain will be examined during the Pilot.
- 2.2 The Municipality commissions the Contracting Party to implement the Pilot in accordance with the documents listed below. The documents together form the Agreement. In so far as these documents contradict each other, the earlier mentioned document shall take precedence over the later one.
- a. This Agreement;
  - b. The *Algemene Inkoopvoorwaarden* [general purchasing terms and conditions] [Appendix 1];
  - c. Addendum to the Processing Agreement including appendices, [Appendix 2];
  - d. The Contracting Party's Offer [Appendix 3].

## 3. ALGEMENE INKOOPVOORWAARDEN

- 3.1 The *Algemene Inkoopvoorwaarden* voor leveringen en diensten [general purchasing terms and conditions for goods and services] of the City of <.....> shall apply to this Agreement, to the exclusion of any terms and conditions of delivery applied by the Contracting Party. The *Algemene Inkoopvoorwaarden* [general purchasing terms and conditions] have been included with this Agreement as Appendix << 3 >>.

- 3.2 Supplementary to Article 14.2. of the *Algemene Inkoopvoorwaarden* [*Aansprakelijkheid en verzekering*] (general purchasing terms and conditions [liability and insurance]), the Municipality understands adequate insurance to mean that it guarantees payment of the maximum amount of €1,000,000 twice a year and that the excess for the Supplier is a maximum of €50,000 per event.
- 3.3 The Contracting Party's liability is limited to the maximum amount for which the Contracting Party must be insured under Article 3.4 of this Agreement.
- 3.4 The Contracting Party declares that the *Algemene Inkoopvoorwaarden* (general purchasing terms and conditions) have been made available to the Contracting Party.

#### 4. DURATION OF THE AGREEMENT

- 4.1 The Agreement shall enter into force retroactively from <.....>.
- 4.2 After the termination of the Agreement, the Contracting Party may not derive any rights from the results of the Pilot and shall not be not entitled to any follow-up assignment for this Pilot or any new assignment.
- 4.3 Obligations which by nature are intended to continue beyond the term of the Agreement shall continue to exist after this Agreement expires. The obligations include, but are not limited to, conflict resolution, choice of court, and applicable law.

#### 5. OBLIGATIONS OF THE CONTRACTING PARTY

- 5.1 The work to be carried out by the Contracting Party or in the context of this Pilot is described in the Offer of the Contracting Party (Appendix 3).
- 5.2 Within a week of the end of the pilot, the Contracting Party will provide the following to the Municipality:
- a digital file of the raw data gathered from the providers of shared mobility, in accordance with the GDPR and the provisions in Article 7;
  - a report containing the analyses and findings of the Contracting Party based on the raw data;
  - findings and conclusions that the Contracting Party has made on the basis of the raw data with due regard for the objectives and conditions set out in the Agreement.

## 6. COST AND INVOICING

- 6.1 The fee to be paid by the Municipality to the Contracting Party for this pilot project amounts to <.....>, excluding VAT. Supporting documentation for this fee is included in Appendix 3.
- 6.2 The tendered prices are fixed for the entire duration of the Agreement.
- 6.3 Payment of the amount referred to under 6.1 shall take place in four equal parts of <.....>, at a maximum of 30 days after the start of each quarter;
- 6.4 The Contracting Party shall send an invoice to the Municipality for the payment of the aforementioned amount. On the invoice, the Contracting Party must include;
- The legal requirements that the invoice must fulfil;
  - name, address, postal code, city, bank/giro number and the relevant IBAN and BIC information, VAT number, Chamber of Commerce number;
  - the invoicing address of the Contracting Party;
  - the total amount of the invoice including and excluding VAT;
  - a reference code, available from the Municipality;
  - a purchasing order number for orders > €1000, available from the Municipality;
  - and any further requirements as agreed with the Municipality.

## 7. PROCESSING OF PERSONAL DATA (PROCESSING AGREEMENT)

- 7.1 Personal data will be processed within the framework of the Pilot. The Municipality is the controller for the processing of that personal data.. The Contracting Party is the processor. Parties will conclude an Addendum to this Processing Agreement, which is attached as Appendix 2.
- 7.2 The categories of personal data that the Contracting Party and the Municipality will process and exchange in the context of the Agreement are included in Appendix 2.
- 7.3 The Contracting Party shall be obliged to comply with the obligations imposed on the Contracting Party as the data processor by the General Data Protection Regulation [GDPR] in the implementation of the Pilot.

More specifically, this means that the Contracting Party:

- shall only process personal data in accordance with and for the purposes of the Pilot; the purpose of the processing is to conduct data-driven policy, policy research and policy development and statistics and to test and develop privacy by design conditions for dashboarding, as further detailed hereafter. The City of

Amsterdam is performing policy research into the number of shared mobility trips commuting from/to Amsterdam. The city wants to investigate if there is an imbalance and for what kinds of trips the shared modalities are used. Furthermore, the city of Amsterdam wants to develop shared moped parking zones in the historic center/the canals to prevent nuisance from cluttered and congregated vehicles. Besides these objectives, the city also wants to test the applicability of the CDS-M in collaboration with the Traffic Research & Knowledge department of the Municipality of Amsterdam. They will investigate whether the current data exported from the dashboard can be used to carry out air quality, modal shift, and origin destination analyses. This research is necessary for the further development of the CDS-M and data driven policy as a whole. Lastly, the data delivery by the mobility providers is in accordance with the permits; an additional application of the Vianova dashboard is to check the compliance with the permit requirements.

- b. shall not process personal data for a period longer than is necessary for the purposes described in the Pilot, unless otherwise required by law. In the context of this Pilot, it shall be necessary for policy makers to be able to analyse raw data for up to 2 years in the past. Two years after receipt of the data items, the data must be anonymized to a k-value of 15. The Contracting Party will make available raw data to the City of <.....> through a S3 AWS extract or Snowflake repository or any other method both parties agree on.[see Article 5.2]. It is kept for a 3-month history;
- c. shall take all appropriate technical and organizational measures, as referred to in Article 32 of the GDPR, to secure personal data and to maintain the security thereof against loss or against any form of improper, incompetent, or unauthorized processing. This will be in keeping with the standards that are common to the sector to which the Contracting Party belongs, where possible specified in Appendix 2;
- d. shall ensure that employees or other persons working for the Contracting Party who may become aware of personal data in the context of the Pilot, only have access to the personal data that are required for the performance of their duties, are obliged to keep the personal data confidential and sign a confidentiality agreement to that effect;
- e. shall carefully consider the employment of processors who are involved with the processing of personal data in the context of the Agreement/Assignment, and shall conclude agreements with them that at least meet the requirements established in Article 28 of the GDPR;

- f. shall assist the Municipality so that data subjects can exercise their GDPR rights [as referred to in Articles 15 through 21 of GDPR] with respect to their personal data to the extent imposed by GDPR, taking into account especially Article 11 of GDPR. In this, the Contracting Party shall immediately inform the Municipality of the request should it receive one from a data subject, so that the Municipality can offer an appropriate response to the data subject if necessary;
  - g. shall immediately notify the Municipality upon discovery of a data breach relating to the personal data for which the Contracting Party and the Municipality are each separately responsible and which have been processed in the context of the Pilot. Notify the Municipality by e-mailing <.....>;
  - h. shall not process personal data outside the European Economic Area without the prior written consent of the Municipality. The Municipality may attach conditions to the permission. For clarity, the Municipality hereby consents to the use of AWS services as mentioned above for the storing and processing of raw data.
- 7.4 The Municipality is entitled to cancel or otherwise terminate this Agreement with immediate effect if the Contracting Party fails to fulfil its obligations as described in this article or fails to do so in a timely manner.
- 7.5 The Contracting Party shall be liable for any damage or loss arising from that party's failure to comply with, or act in breach of, the obligations imposed on data processors under or pursuant to the GDPR and/or its failure to comply with, or act in breach of, the provisions of this provision, without prejudice to claims based on statutory regulations. The Contracting Party shall be liable for damage or loss in so far as it is caused by its activity, including any breaches of the privacy of data subjects. The Contracting Party's liability shall be limited to the amount agreed in the agreement, unless it relates to wilfulness or deliberate recklessness.
- 7.6 Subject to the liability limitation referenced above, the Contracting Party shall indemnify the Municipality against claims from third parties in connection with the Contracting Party's acting in violation of the GDPR and/or other regulations that lay down requirements for the processing of personal data, where such claims result in a definitive sanction of the Municipality issued by a competent court or authority. In such cases, the Contracting Party shall reimburse the Municipality for all of the immediate and consequential costs [including costs of legal assistance] and damages related to this.
- 7.7 The Contracting Party shall be considered a processor in relation to the organisations of shared mobility from whom it receives the data. The Contracting Party shall enter into a Data Processing Agreement with the providers of shared mobility before receiving data from those parties in the context of this Pilot. At the request of the



Municipality, the Contracting Party shall provide insight into those Data Processing Agreements to allow the Municipality to verify whether the Contracting Party has fulfilled this obligation.

## 8. CONSEQUENCES OF TERMINATING THE AGREEMENT

- 8.1 In addition to Article 12 of the Algemene Inkoopvoorwaarden [general purchasing terms and conditions], the following shall apply in the event of termination of the Agreement:
- a. Deliverables, as described above, that have already been completed in the context of the Agreement at the time of cancellation or dissolution and the payment obligations associated with them, shall not be affected by the dissolution.
  - b. Amounts relating to those Deliverables and that have already been invoiced shall remain due in full and shall become immediately payable at the time of dissolution. Furthermore, the Contracting Party shall be required to repay any undue payment made to the Contracting Party, increased by the statutory interest since the date of payment, within one month of the recorded date that the payment notice was sent.
  - c. The parties shall make agreements on the settlement of the remaining outstanding obligations. If so requested by the Municipality, the Contracting Party is obliged to complete certain work activities at the agreed prices.

## 9. COMMUNICATION

- 9.1 The Contracting Party and the Municipality will appoint one contact for consultation on tactical and strategic level and the assessment. Contact information for Contract Party: <.....>. Contact information for Municipality: <.....>.
- 9.2 The Municipality and the Contracting Party will consult with each other at a tactical and strategic level at least twice a month.

## 10. ASSESSMENT OF THE PILOT

- 10.1 During the Pilot, the Municipality will assess the implementation of the Pilot by the Contracting Party twice. The interim assessment will take place six months after the start of the pilot, and the final assessment will take place at the end of the pilot.

- 10.2 The Municipality will in any case assess the pilot on the following: the quality of service, technical analysis of the data, the speed of processing our additions, and whether the interim or final results contribute to the objectives for which the pilot was intended.

## 11. BELEIDSREGEL INTEGRITEIT EN OVEREENKOMSTEN

- 11.1 This Agreement is subject to the Beleidsregel Integriteit en Overeenkomsten [integrity and agreements provision], hereinafter referred to as “BIO”. The BIO is available on the internet and can be downloaded from <.....>. The Contracting Party declares that it has been able to take note of the BIO and declares, by signing this Agreement, that it explicitly agrees that the BIO will only be made available on the internet at the location stated.
- 11.2 The Contracting Party declares there is no risk to integrity applicable at the time of entering into this Agreement. Integrity risk is understood to mean:
- a. the Contracting Party’s engagement in types of conduct or committing or participating in crimes or offences as referred to in Articles 4 and 5 of the BIO. Participating in a crime or offence is understood to mean: committing, aiding, abetting, and complicity as referred to in Article 47 and 48 of the Wetboek van Strafrecht [Dutch penal code];
  - b. the fact that criminal proceedings have been instituted against the Contracting Party;
  - c. the Contracting Party’s failure to fulfil its obligations in respect of social security contributions and/or taxes on time.
- 11.3 The Contracting Party declares that it has no knowledge of a risk to integrity that applies to parties affiliated with the Contracting Party. Persons or parties shall in any case, but not exclusively, be deemed to be affiliated with the Contracting Party if they:
- directly or indirectly manage the Contracting Party;
  - play or have played an important role in the execution of the Agreement;
  - have authority over the Contracting Party;
  - provide funding to the Contracting Party;
  - are part of the same group as referred to in Article 2:24b BW [Dutch civil code];
  - or are otherwise in a collaborative relationship with the Contracting Party.
- 11.4 During the term of the Agreement, the Contracting Party shall undertake to refrain from conduct that is not in accordance with the rules of integrity, which in any case includes the conduct referred to in the second paragraph under a and c of this Article.

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- 11.5 Pursuant to Article 5a of the BIBOB Act [public administration probity screening act], the Municipality may request the advice of the National BIBOB Agency on the Contracting Party before suspending or dissolving the agreement or terminating the legal act if one of the situations referred to in Article 9(3) of the BIBOB Act occurs.
- 11.6 The Contracting Party shall immediately inform the Municipality if and as soon as the Contracting Party becomes aware of the fact that it is the subject of criminal investigation or that criminal proceedings have been instituted against the Contracting Party or a party affiliated with it.
- 11.7 The Contracting Party shall notify the Municipality of any acquisition of the business and any change in the control relationships within the business that lead to a significant change in control [in which any change in control greater than 10% is significant].
- 11.8 The Municipality has the right to screen the Contracting Party for the existence of a risk to integrity during the term of the Agreement. If the Municipality requires the cooperation of the Contracting Party in this regard, the Contracting Party shall provide such cooperation upon first request.
- 11.9 The Municipality is entitled to screen third parties to be contracted by the Contracting Party in the execution of this Agreement for the existence of a risk to integrity. The Contracting Party shall guarantee that any third parties to be contracted for the execution of this Agreement will cooperate in this screening upon the Municipality's first request. On the basis of a risk to integrity, the Municipality may refuse to engage a third party or may require that the engagement of this third party be terminated, unless such termination cannot reasonably be required of the Contracting Party.
- 11.10 The costs of the screening will be borne by the Municipality, unless the Agreement can be dissolved or terminated as a result of the screening on the basis of section 11 of this Article.
- 11.11 The Municipality may suspend the execution of the Agreement and any other agreement between the Contracting Party and the Municipality immediately and at its own discretion, or terminate it by dissolution or cancellation, without being obliged to pay compensation for any damage and without having to observe a term, if:
- the Contracting Party has not stated the truth with regard to the provisions in the second bullet point of this paragraph;
  - the Contracting Party or affiliated party has been irrevocably convicted of committing or participating in offences as referred to in Article 4 paragraph 1 of the BIO;

- the Contracting Party or affiliated party has been irrevocably convicted of committing or participating in offences as referred to in Article 5, paragraph 3 of the BIO;
- the Contracting Party or affiliated party has made a serious error in the exercise of their profession as referred to in Article 5 paragraphs 4 and 5 of the BIO;
- there is a risk, whether or not it is evident from advice from the BIBOB Agency, that an Agreement will also be used by the Contracting Party to (i) make use of benefits that can be valued in money, gained or to be gained from criminal offences committed, (ii) commit criminal offences, or (iii) that a criminal offence has been committed in order to conclude an Agreement;
- criminal proceedings have been instituted by competent authorities against the Contracting Party or an affiliate of the Contracting Party;
- the Contracting Party has not fulfilled its obligations with regard to social security contributions and/or taxes on time;
- the Contracting Party or the third party as referred to in paragraph 9 of this article has failed to provide sufficient cooperation with regard to a screening by the Municipality or a screening carried out on the instructions of the Municipality, for example but not exclusively if there is a circumstance as described in Article 4 of the BIBOB Act;
- there are risks to integrity other than those mentioned in this paragraph in relation to the Contracting Party or the party affiliated to the Contracting Party, as a result of which the Municipality cannot reasonably be required to maintain the Agreement as it stands.

11.12 Before the Municipality proceeds to suspension or termination by means of dissolution or notice in accordance with paragraph 11, the Municipality shall assess whether the measure to be taken is proportionate in view of the severity of the detected risk to integrity and the measures already taken by the Contracting Party.

11.13 If the Municipality dissolves the Agreement on the basis of paragraph 11 of this article, or terminates it in whole or in part, the Contracting Party shall forfeit to the Municipality a penalty of the sum of €50,000 without any further action or formality being required, and without the Municipality having to prove any loss or damage and without prejudice to the Municipality's right to claim additional damages.

11.14 The Contracting Party shall indemnify the Municipality against claims from third parties resulting from suspension, dissolution, or termination of the Agreement.

## 12. FORCE MAJEURE

The following are never defined as force majeure: lack of staff, strikes, staff illness, shortage of raw materials, issues with transport, delayed delivery or unsuitability of goods required for the execution of the work, liquidity or solvency problems on the part of the contractor, or shortcomings of third parties engaged by them.

## 13. DISPUTES

13.1 In the event of a dispute, the Parties shall immediately consult with each other with a view to finding a solution. The Parties shall make every effort to find a solution. If the Parties cannot reach a solution, the dispute will be submitted to the competent court in Amsterdam.

13.2 This Agreement is governed by Dutch law.

Drawn up in duplicate and signed in <.....> on <.....>.

On behalf of the Municipality

<.....>

On behalf of the Contracting Party

<.....>

.....  
PLEASE COMPLETE

.....  
PLEASE COMPLETE

## APPENDICES

1. Algemene inkoopvoorwaarden [general purchasing terms and conditions]
2. Addendum to the Processing Agreement signed by both parties
3. Contracting Party's Offer

**APPENDIX 2****ADDENDUM TO THE PROCESSING AGREEMENT****The undersigned:**

The municipality of <.....>, of which the city is the controller, hereinafter referred to as “the Controller” and legally represented by <.....>.

and

3rd Party Processor, <.....>, with its registered office in <.....>, hereinafter referred to as “the Processor” and legally represented by <.....>.

hereinafter referred to individually as the “Party” or collectively as the “Parties”

**Whereas:**

- a. In view of the fact that the Parties entered into the Processing Agreement on < date >;
- b. Having regard to the provisions of the Explanatory Memorandum accompanying the VNG Standard Processing Agreement: “Agreements between the Parties on other subjects that do not directly relate to the processing of personal data, such as the performance of audits, liability and the exit strategy, are laid down in the Main Agreement. Thus, these do not belong in the Processing Agreement. In the event that the Parties have made no agreements on these subjects, or on other subjects, in the Main Agreement, we advise the Parties to do so. The Parties may do so in the Main Agreement, or in an addendum to the Main Agreement. In those cases where there is no main agreement at all, the Parties may choose to make these agreements in an addendum to the Standard Processing Agreement.”
- c. In view of the circumstance that no agreement has been entered into regarding the subjects mentioned in the additional provisions of the Addendum, the Controller and Processor agree to add this Addendum to the Processing Agreement mentioned under [a].

**Agree as follows:**

## **Article 2. Exit strategy / Data return**

- 2.1 The Processor shall, upon the written request of the Controller, immediately make available to the Controller, or to a third party to be designated by the Controller, all personal data processed under the Processing Agreement. This includes copies and operations performed on personal data. Such a request may be made by the Controller during the term of the Processing Agreement and at the time the Processing Agreement is terminated. If necessary, the Controller may set reasonable requirements for the manner in which the personal data is made available, including requirements for the file format.
- 2.2 The Processor shall ensure at all times during the transfer of personal data described above that there is no loss of functionality or data carriers [or parts of data carriers] containing personal data. Furthermore, the transfer shall take place in such a way that the continuity of the services is guaranteed as much as possible, or at least is not hindered by acts or omissions on the part of the Processor. The Processor shall be required to destroy beyond repair any copies remaining after the transfer.
- 2.3 The Processor shall make a record of the transfer and requested destruction, describing the manner in which the data was destroyed beyond repair. Upon request, the Processor shall provide the Controller with proof of destruction. The transfer and destruction costs shall be borne by the Processor.

## **Article 4. Engagement of [sub]processors**

- 4.1 In addition to the provisions of Article 7.3[e] of the Processing Agreement and Article 28[2] of the GDPR, the Processor shall grant the Controller a period of eight weeks to object to the engagement of a [sub]processor. During this eight-week period, the Processor is not permitted to use the proposed [sub]processor.
- 4.2. If the Controller expresses legitimate objections to the proposed [sub]processor within this eight-week period and the Parties do not reach an agreement to address these objections, the Processor shall not be permitted to use this [sub]processor.
- 4.3 The foregoing does not affect the powers of the Controller under the Integrity Policy.

## **Article 5. Performance of pen and ethical hacking tests**

- 5.1 Prior to accepting the application or the SAAS solution, the Processor demonstrates by means of a pen and ethical hacking test [in accordance with the Open Web

Application Security Project [OWASP] Web Security Testing Guide] conducted by an expert independent party, that the application or the SAAS solution and the infrastructure through which personal data is processed comply with the OWASP criteria and the criteria specified in the Processing Agreement. The Processor shares the results of this test and also offers insight into the assignment, the scope and any relevant information about the party carrying out the assessment. If, in the opinion of the Controller, the Processor has commissioned an insufficiently comprehensive pen and ethical hacking test, the Processor must promptly commission a second test and submit the results. The costs of these pen and ethical hacking tests shall be borne by the Processor.

- 5.2 The Processor shall perform an annual pen and ethical hacking test in accordance with the OWASP Web Security Testing Guide on the application and submit the results [including assignment, scope and relevant information on the party carrying out the assessment] upon the Controller's first request. The costs of this test shall be paid by the Controller.
- 5.3 If, in the opinion of the Controller, circumstances warrant it, the Controller is entitled to commission additional pen and ethical hacking tests. The Processor shall provide the necessary cooperation for this purpose and the costs thereof shall be borne by the Controller.

## **Article 6. Performance of audits**

- 6.1 If, in the reasonable opinion of the Controller, circumstances warrant it, the Controller shall be entitled to request that the Processor have the processing of personal data audited, even if the Processor has valid certification.
- 6.2 The Processor must admit the Controller or the independent auditor [commissioned by the Controller] and provide full cooperation, as well as the requested information, so that the audit can be carried out. The Controller will only perform the audit [or have it performed] after prior notification to the Processor and with due observance of a reasonable period of time [at least 2 weeks] between the notification and the audit. All persons involved in the audit operations must be subject to appropriate confidentiality and/or secrecy duties, as all information collected or accessed in the context of the audit shall be considered as 3rd Party's confidential information and trade secrets.
- 6.3 The costs of the abovementioned audit shall be borne by the Controller, unless the auditor identifies one or more material deficiencies of a non-subordinate nature on the part of Processor that negatively impact the compliance of the processing under the Processing Agreement and GDPR.



6.4 The costs of any additional audits, remediation and problem resolution shall be borne by the Processor, unless the Parties mutually agree otherwise.

Thus, agreed and signed in duplicate,

date: <.....>

**City of** <.....>

on its behalf: <.....name, position.....>

location: <.....>

date: <.....>

**3rd Party** <.....>

on its behalf: <.....name, position.....>

location: <.....>

date: <.....>