Data Processing Agreement
Applicable only to KPN Business Market (Zakelijke Markt) services

V1 - October 2018
The party purchasing goods or services from KPN (the ‘Customer’);

and

KPN B.V., a company incorporated according to Dutch law with limited liability, with its registered office at Wilhelminakade 123, 3072 AP in Rotterdam, listed in the Commercial Register under number 27124701 (‘KPN’);

jointly referred to as the ‘Parties’ and each individually as a ‘Party’,

WHEREAS:

A. The Parties entered into (an) Agreement(s) in connection with which KPN as the processor will process personal data in the cases as described in this Data Processing Agreement and the Specification.

B. The General Data Protection Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016 (GDPR) and the Dutch GDPR Implementation Act (Uitvoeringswet AVG), as well as the Dutch Telecommunication Act (Telecommunicatiewet), are applicable to the processing of personal data.

C. In this Data Processing Agreement the Parties want to lay down the manner in which personal data will be processed in connection with the services.

AGREE AS FOLLOWS:
1 Definitions

1.1 The concepts of ‘personal data’, ‘processing’, ‘data subject’, ‘controller’, ‘processor’ and ‘personal data breach’ have the meaning ascribed to them in the GDPR.

1.2 The capitalized words have the meaning that is given to them below.

GDPR
Regulation (EU) 2016/679 (General Data Protection Regulation).

Agreement
the agreement on the basis of which the Customer procures goods and/or services from KPN.

Data Protection Laws
the Dutch Telecommunication Act, the GDPR and the Dutch General Data Protection Regulation Implementation Act, including all legislation or regulations determined pursuant to these regulations, and all other applicable legislation and regulations applicable to personal data processing.

Specification
the document laying down the processing details for each service purchased.

Sub-processor
a processor engaged by KPN for personal data processing in connection with the Agreement.

Data Processing Agreement
this data processing agreement.

2 General principles

2.1 This Data Processing Agreement forms an integral part of the Agreement and only applies to KPN processing personal data in the role of processor, if and insofar this has been determined in the Specification. This Data Processing Agreement is not applicable to the processing operations for which KPN is the controller.

2.2 This Data Processing Agreement terminates by operation of law on termination of the Agreement.

2.3 KPN processes personal data exclusively in accordance with the written instructions of the Customer. These instructions are laid down in the Agreement and the Specification. The Customer can supplement or amend the instructions by adjusting the Agreement or the Data Processing Agreement with KPN. KPN will inform the Customer if in its opinion the instructions are in breach of the Data Protection Laws.

2.4 KPN considers the personal data as confidential information and ensures that all its employees who have access to the personal data are bound to a contractual secrecy obligation.

2.5 KPN never processes the personal data for its own purposes. If pursuant to applicable legislation or regulations KPN is obliged to process personal data without having received any written instructions from the Customer to this end, KPN will notify the Customer of that obligation unless such notice is in contravention of legislation or regulations.
3 Technical and organisational security measures

3.1. KPN will demonstrably take suitable and effective technical and organisational security measures, which, considering the latest technology and the associated costs, correspond with the nature of the personal data to be processed, in order to protect the personal data against loss, unauthorised access, corruption or any form of unlawful processing, as well as in order to guarantee the (prompt) availability of those data.

3.2. The measures that KPN takes are laid down in the KPN Security Policy as updated from time to time in order to continue to comply with Clause 3.1.

4 Sub-processors

4.1. The Customer hereby gives its general consent to KPN to appoint new Sub-processors for processing personal data. KPN will inform the Customer of its intention to appoint a Sub-processor and will give the Customer 15 working days after this notice to object to the appointment of a Sub-processor on reasonable grounds. The Customer gives specific consent for the Sub-processors stated in the Specification.

4.2. KPN will ensure that its Sub-processors are contractually bound to equivalent obligations that do not provide less protection to the personal data than those to which KPN is obliged under this Data Processing Agreement.

4.3. KPN is liable for the acts of a Sub-processor as if those acts were performed by KPN itself.

5 Transfer of personal data outside the EEA

5.1. KPN is not allowed to transfer personal data to a country outside the European Economic Area (EEA), unless:
   a) the Customer has given its prior written consent to this end;
   b) the personal data are transferred to a third country that the European Commission has decided has an adequate legal protection level; or
   c) the transfer takes place on the basis of approved binding corporate rules as meant in Article 47 of the GDPR.

5.2. KPN is also allowed to transfer personal data to a Sub-processor established outside the EEA for which the Customer gave consent by means of this Data Processing Agreement if the transfer takes place on the basis of a mechanism that has been determined in a decision by the European Commission as an appropriate safeguard for transfer to third countries, such as an EU Standard Contract (Decision 2010/87/EU or subsequent instruments). If necessary to comply with the requirements of the GDPR, the Customer hereby authorises KPN to take such appropriate safeguards on behalf of the Customer, unless the Customer has expressed in writing that it withdraws this authorisation. In the latter case the Customer itself will be responsible for arranging appropriate safeguards.

5.3. The nature of the service may result in the transfer to a country outside the EU being necessary in order to provide the service, for instance in order to be able to connect an international phone call. The Customer hereby gives its written consent for cases in which the transfer of personal data is strictly necessary for the provision of the service purchased.
6 Cooperation in fulfilling legal obligations

6.1. At the reasonable request of the Customer, KPN will provide necessary assistance in carrying out a DPIA. If required pursuant to Article 36 of the GDPR, KPN will give the necessary assistance to the Customer for a prior consultation with a competent supervisory authority. KPN is entitled to charge the Customer the reasonable costs of assistance as meant in this paragraph.

6.2. KPN will inform the Customer without delay in the event that it receives a request from a data subject in which it invokes the rights in Chapter III of the GDPR. At the request of the Customer, KPN will cooperate as reasonably required for adequately handling such a request.

6.3. KPN will inform the Customer without delay if it is legally obliged to provide third parties with (access to) personal data, unless this is legally prohibited.

7 Inspection

7.1. At the request of the Customer, KPN will make available the information present that the Customer reasonably needs to demonstrate that it has complied with the obligations under Article 28 of the GDPR.

7.2. The Customer is entitled to verify compliance with the GDPR by KPN or have this verified. KPN will enable the Customer, at the latter’s request, to have the processing operations inspected by an independent expert once every year. KPN will give access to all information and facilities reasonably requested, at a moment in time further to be determined by the Parties in mutual consultation. KPN can impose restrictions on such an inspection in order to guarantee the continuity and confidentiality of its services. The costs of the inspection are to be borne by the Customer unless the inspection demonstrates that KPN has materially failed in fulfilling the obligations under this Data Processing Agreement.

7.3. If available, KPN will submit, at the first request of the Customer, a certificate issued by an independent and expert third party from which it is evident that KPN complies with the norms and standards that are applicable to the services pursuant to the Agreement.

7.4. KPN grants the supervisory authority access to the systems, facilities and supporting documentation relevant to the processing operations. KPN will notify the Customer if it receives such a request, unless this is prohibited by law.

8 Personal data breach

8.1. KPN shall inform the Customer of a personal data breach (a ‘Data Breach’) without any unnecessary delay and in any event within 36 hours after discovery. In this connection, within 36 hours after discovery KPN will provide all the relevant information with regard to:
   a) the nature of the Data Breach;
   b) the personal data (that might be) affected;
   c) the data subjects (who might be) affected;
   d) the established and likely consequences of the Data Breach; and
   e) the measures taken or that will be taken to resolve the Data Breach and to limit the consequences and damage as much as possible.
8.2. In the event that a Data Breach occurs at KPN, it will:
   a) take the reasonably required measures to remedy the Data Breach and mitigate its consequences;
   b) provide the Customer on request with additional information that the Customer needs to be able to comply with Articles 33 and 34, insofar as they are in KPN’s possession;
   c) discuss potential risk-mitigating measures with the Customer;
   d) not provide any information about the Data Breach to the press, data subjects or other third parties, unless KPN is legally obliged to do so;
   e) have written procedures implemented so that it can inform the Customer within due time of a Data Breach.

9 **Destruction of personal data**

9.1. KPN will destroy the personal data after expiry of the retention periods included in the Specification and at the latest within 90 days after termination of the Agreement.

9.2. On termination of the Agreement, KPN will cooperate with the Customer to obtain a copy of the personal data in a format appropriate for the service. KPN can cooperate with this by providing the Customer with a digital environment within which the Customer itself can generate a copy of the personal data.

10 **Term of the agreement**

The term of this Data Processing Agreement will be equal to that of the Agreement. If the services provided must also be continued after termination of the Agreement (for instance by an exit arrangement), the provisions of this Data Processing Agreement will continue to be applicable to this continued provision of services for the entire duration of the actual cooperation.

11 **Liability**

11.1. The liability provisions agreed in the Agreement are applicable to the obligations as included in this Data Processing Agreement.

11.2. If and insofar as no liability provision has been included in the Agreement, the liability of the Parties for damage to physical property will be limited to a maximum of EUR 500,000 per event (in which a series of associated events is considered to be one single event). All other forms of damage, including consequential loss, lost profits, reputational damage, missed savings, loss of data, damage due to operational delays and departure of personnel, penalties and reimbursements payable under civil law to third parties, and reduced goodwill, are always excluded.

11.3. Contrary to paragraph 1 and 2 of this Clause, if and insofar as a penalty imposed on a Party by the supervisory authority arises directly from:
   a) an attributable failure by the failing Party and/or its subcontractors/Sub-processors in fulfilling its obligations under this Data Processing Agreement; or
   b) a violation of the applicable personal data processing legislation by the failing Party and/or its subcontractors/Sub-processors,
this failing Party will be liable to the Party on which the penalty was imposed, for the amount of the penalty, with a maximum of EUR 10,000,000 (10 million euros).
12 Final provisions

12.1. KPN will provide any notices in relation to this Data Processing Agreement to the contact person made known to KPN. It is the Customer’s responsibility to inform KPN of any changes of the contact person and contact details.

12.2. KPN is entitled to charge compensation for cooperating on the basis of this Data Processing Agreement insofar as this cooperation is not included in the contracted services.

12.3. In the event one or more provisions of this Data Processing Agreement are declared unenforceable, the remaining provisions will continue to remain fully in force.

12.4. If the Data Processing Agreement is in contravention of the Agreement, the Data Processing Agreement will prevail.

12.5. By entering into this Data Processing Agreement, any Data Processing Agreements entered into previously will lapse.

12.6. This Data Processing Agreement is governed by Dutch law. Any disputes about or in connection with this Data Processing Agreement shall exclusively be submitted to the competent court in Rotterdam.