

Processing Agreement.

Processing Agreement.

The undersigned:

1. «Account Name», with its registered office and principal place of business at «street name + house number, postcode, place», legally represented in this matter by «Initials and surname», in the position of «position name», hereinafter to be referred to as: “Account Name” or “the Controller” and,
2. DM Productions B.V., with its registered office and principal place of business in Hoofddorp, legally represented in this matter by Ms M. Simons-Kleijnen, in the position of Director, hereinafter to be referred to as: “MyParcel” or “the Processor”;

and hereinafter jointly referred to as: “the Parties”

Whereas:

- a. «Account Name» has entered into an agreement with MyParcel regarding the “transport of goods” (hereinafter: the “Service”);
- b. the parties provide that in the context of the execution of the agreement by MyParcel, Personal Data within the meaning of Article 4(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council (hereinafter: “General Data Protection Regulation” or “GDPR”), as specified in Appendix 1 (hereinafter: “Personal Data”), will be processed without being subject to the direct authority of “Account Name”;
- c. MyParcel qualifies as the Controller within the meaning of Article 4, Paragraph 7 of the GDPR with regard to the digital part of the Service (e.g. the back office environment, any pre-registration, digital sorting, the Track & Trace functionality, etc.);
- d. «Account Name» with respect to the physical part of the Service (collection, sorting and delivery) determines the purpose and means of the processing of Personal Data and should therefore be qualified as the Controller within the meaning of Article 4, Paragraph 7 of the GDPR;
- e. MyParcel, with due observance of the provisions under considerations C and D, processes Personal Data on behalf of the Controller pursuant to the Agreement with regard to the physical part of the Service, on the basis of which MyParcel must be qualified as the Processor within the meaning of Article 4, Paragraph 8 of the GDPR;
- f. «Account Name», as Controller under Article 28, Paragraph 3 of the GDPR, is obliged to enter into a Processing Agreement with the Processor and therefore Parties wishes to lay down in writing the terms and conditions as well as the mutual rights and obligations regarding the processing of Personal Data by the Processor by means of this Processing Agreement (hereinafter: “Processing Agreement”);
- g. this Processing Agreement applies to all processing operations of Personal Data in the execution of and during the term of the Agreement.



Are agreed as follows:

1. Definitions

- 1.1** Data subject is the person to whom the Personal Data relates.
- 1.2** Special Category Data is Personal Data as referred to in Article 9, Paragraph 1 of the GDPR.
- 1.3** Data breach is a breach of security that leads to the destruction, loss, modification or unauthorised provision of or unauthorised access to data transmitted, stored or otherwise processed.
- 1.4** Service is the Processor's service to be provided under the Agreement.
- 1.5** Personal Data is any data relating to an identified or identifiable natural person, which is or will be processed by the Processor in any way under the Agreement.
- 1.6** Subprocessor is a party that processes Personal Data on behalf of the Processor.
- 1.7** Processing Agreement is the present Agreement.
- 1.8** Processing is any act or entirety of acts relating to Personal Data.

2. Processing of Personal Data

- 2.1** Under the terms of this Processing Agreement, the Processor undertakes to process Personal Data on behalf of the Controller. The Processor will process the Personal Data in a proper and careful manner and in accordance with the GDPR and other applicable laws and regulations and/or codes of conduct concerning the processing of Personal Data.
- 2.2** The Controller guarantees that the Personal Data that he or she provides to the Processor comply with all applicable data protection laws and regulations and that such laws and regulations permit the Personal Data to be provided to the Processor and the Personal Data to be processed by the Processor.
- 2.3** The Processor processes the Personal Data in a proper and careful manner and only to the extent necessary to provide the Service to the Controller. The categories of Personal Data that are provided to the Processor and that may be processed for the performance of the Service are described in Appendix 1.
- 2.4** The Processor will only process the Personal Data on the instructions of and in accordance with the instructions of the Controller. The Processor will not process the Personal Data for its own purposes or for any other purpose, unless it is subject to mandatory legal obligations.



2.5 The Processor will not retain Personal Data made available under the Agreement for longer than is necessary (i) for the execution of this Agreement; or (ii) to comply with a legal obligation incumbent upon it.

3. Non-disclosure

3.1 Unless otherwise required by law and/or a court order, the Processor is obliged to treat the Personal Data as confidential and to keep it strictly confidential.

3.2 The Processor will ensure that those who act under its authority or on its instructions (employees and any third parties) who necessarily need to take cognisance of the Personal Data, comply with the duty of confidentiality included in this article. The Processor will ensure that a non-disclosure agreement or clause has been concluded for everyone involved in the processing of the Personal Data.

3.3 The Processor will immediately inform the Controller of any request for information, disclosure or other form of request and disclosure of the Personal Data that is in breach of the duty of confidentiality included in this article.

4. Security and data breach notification obligation

4.1 The Processor will ensure that it has taken, maintained and, if necessary, adapted appropriate technical and organisational measures to protect the Personal Data against loss, falsification, unlawful dissemination or access, or any other form of unlawful processing. Appendix 2 describes the security measures that the Pro-

cessor has taken in any case at the time of the conclusion of this Processing Agreement.

4.2 The Processor will ensure that its (own or hired) employees who are involved in the processing of Personal Data are aware of and comply with the obligations of the Processor as set out in this Processing Agreement.

4.3 In the event of a suspected or actual (i) Data breach; (ii) breach of security measures; (iii) breach of duty of confidentiality or (iv) loss of Personal Data, the Processor will inform the Controller immediately, but at the latest within 36 hours after the incident is first discovered, in accordance with the requirements set out in Appendix 3. The Processor will take all reasonably necessary measures to prevent or limit (further) unauthorised access, modification, disclosure or otherwise unlawful processing and to terminate and prevent a breach of security measures, breach of duty of confidentiality or further loss of Personal Data in the future, without prejudice to any right of the Controller to damages or other measures.

4.4 At the request of the Processing Manager, the Controller will cooperate in informing the competent authorities and the data subjects.

4.5 The Processor makes agreements with Sub-processors about the reporting of incidents to the Processor, which enable the Processor and Controller to fulfil obligations in the event of an incident as described in Article 4, Paragraph 3.



5. Engagement of Subprocessors

5.1 The Controller authorises the Processor to use Subprocessors listed in Appendix 4 for the processing of Personal Data. If the intention is to engage new Subprocessors or if changes may occur, the Processor must inform the Controller in advance and must enable the Controller to object to the changes.

5.2 The Processor will ensure that the relevant Subprocessor assumes at least the same obligations as set out for the Processor in this Processing Agreement.

5.3 In the relationship between the Parties, the Processor remains the point of contact for the Controller. The permission given by the Controller does not affect the responsibility and liability of the Processor for the performance of the Processing Agreement.

6. Processing outside of the European Economic Area

The Processor will only transfer Personal Data to or make Personal Data accessible from a country outside of the European Economic Area if it has appropriate safeguards in place. Appendix 5 gives an overview of processing operations outside of the EEA and the safeguards that have been put in place.

7. Rights of data subjects

7.1 Taking into account the nature of the processing and as far as possible, the Processor provides assistance to the Controller to comply with the obligations under the GDPR or other applicable regulations within the statutory periods, in particular the rights of data subjects, including but not limited to: the right of access, the right to rectification, the right to erasure of data, the right to limitation, the right to data portability and the right to object. The reasonable costs associated with this are payable by the Processor.

7.2 The Processor will immediately inform the Controller of the written requests made by the data subjects to the Processor and will ask the Controller for further instructions in this regard.

8. Support in executing a data protection impact assessment and prior consultation

Taking into account the nature of the processing and the information available to the Processor, the Processor will assist the Controller in fulfilling its obligations under Article 35 of the GDPR (executing a data protection impact assessment) and Article 36 of the GDPR (prior consultation).



9. Transfer and destruction of data

9.1 The Processor will ensure that, in consultation with the Controller (i) all or part of the Personal Data made available by the Controller as part of the service provision will be destroyed at all locations; (ii) all or part of the Personal Data made available by the Controller as part of the service provision is made available to a subsequent service provider; or (iii) the Controller is given the opportunity to withdraw from the service provision Personal Data or part of the Personal Data made available by the Controller as part of the service provision.

9.2 The Processor is at all times obliged, at the request of the Controller, to destroy within a reasonable period of time all records and copies of the Controller's information relating to Controller and/or information produced under the Agreement.

9.3 The Processor may deviate from the provisions of the preceding paragraphs to the extent that a statutory (storage) period would apply with regard to the Personal Data or to the extent that this is necessary to be able to prove to the Controller compliance with its obligations.

10. Right of inspection

10.1 The Controller has the right to check the Processor's compliance with the provisions of this Processing Agreement once per calendar year (or to have this done) after prior written notice and subject to a period of ten working days.

10.2 At the request of the Controller, the Processor will make available all information reasonably necessary to demonstrate compliance with the obligations set out in this Processing Agreement and will cooperate in order to facilitate audits. This audit will be carried out by an independent third party appointed by the Controller and bound by a duty of confidentiality.

10.3 After consultation with the Controller, the Processor may choose to replace the audit by a Third Party Declaration.

10.4 The costs of the audit are payable by the Controller, with the exception of the costs of employees of the Processor who supervise the audit. If the audit reveals that the Processor has seriously and materially failed to comply with this Processor's Agreement, the reasonable costs of the audit will be payable by the Processor.

10.5 The Processor is familiar with the independent supervisory powers of the Dutch Personal Data Authority and any other supervisors under whose supervision the Controller falls and will, where appropriate, give these supervisors access to and cooperate with an investigation in relation to the Personal Data processed pursuant to the Agreement. If the Processor receives such a request from the Dutch Personal Data Authority, it will inform the Controller immediately.



11. Liability

The Processor is liable for any damage resulting from an attributable failure to comply with the obligations ensuing from this Processing Agreement, or if the Processor acts in breach of legislation and regulations, in accordance with what has been agreed between the Parties in the Agreement.

12. Intellectual property rights to the Personal Data

All intellectual property rights – including any copyrights and database rights – to the file or files of the Personal Data remain at all times vested in the Controller or its licensor(s).

13. Duration, termination and modification

13.1 This Processors' Agreement is a supplement to the Agreement, has the same term as the Agreement and ends as soon as the Agreement ends.

13.2 Termination of this Processing Agreement will not release the Parties from their obligations under this Processing Agreement that by their nature are deemed to continue after termination.

13.3 Amendments to this Processing Agreement are only valid if they have been agreed in writing between the Parties.

14. Final provisions

14.1 Unless otherwise stipulated in the Agreement, this Processing Agreement is governed by Dutch law.

14.2 All disputes arising from or in connection with this Processing Agreement will be submitted exclusively to the competent court as set out in the Agreement.



Agreed and drawn up in duplicate:

on behalf of the Controller:

Name: Ms M. Simons-Kleijnen
Position: Director
Date:
Town: Hoofddorp

on behalf of the Processor:

Name:
Position:
Date:
Town:

.....
Signature

.....
Signature



Appendix 1.

Overview of the categories of Personal Data to be processed

Depending on the products and/or services chosen by the Controller, the following categories of Personal Data are processed.

MyParcel processes the following categories of Personal Data:

Personal Data categories	Personal Data categories
Name and address details	MyParcel addressees/ customers
Electronic contact details	MyParcel addressees/ customers
Bank account number	MyParcel customers
Telephone number	MyParcel addressees/ customers

Which processing operations takes place and what is the nature and purpose of the processing?

Processing operation	Purpose
Administration	Updating customer records
Collecting shipping information	Creating labels for carriers
Transfer	To carrier for sending parcels



Appendix 2.

Overview of security measures

The Processor will observe sufficient or adequate technical and organisational standards and measures with regard to the data to be processed by the Controller, whereby the measures referred to above may depend on the products/services chosen by the Controller.

Physical measures:

- Site separation
- Lockable wall openings
- Lockable spaces in the building
- Outdoor lighting
- Window cladding

Electronic measures:

- Access system for persons
- Access system for vehicles to the site
- Intrusion detection system
- Take-out/sabotage restrictive measures
- CCTV (camera) surveillance

IT measures:

- Use of encryption and security certificates
- Application of password policy
- Backup & restore procedures
- Deployment of firewall
- Deployment of resources for workplace management
- Active monitoring and operational management of environment
- Periodic security checking

Organisational measures:

- Security Handbook
- Visitor procedure
- Closed outer wall during the process
- Instruction processes/maps
- Non-disclosure agreements



Appendix 3.

Data breach instructions

The Processor contacts «First name», «Surname» on:

Email address: «email address»

Telephone number: «mobile number»

Please provide at least the following information:

What is the (suspected) cause of the breach?

What is the (known and/or expected) consequence?

What is the (proposed) solution?

What are the contact details for the report follow-up?

How many people's data are involved in the breach (if exact number is unknown: the minimum and maximum number of persons whose data are involved in the breach)?

Describe the group of persons whose data are involved in the breach.

What type or types of Personal Data are involved in the breach?

On which date did the breach take place?

During which period did the breach take place (if exact date is unknown)?

Specify the date and time when the breach became known to the processor or the Third Party or Subcontractor it engaged.

Has the data been encrypted, hashed or otherwise made incomprehensible or inaccessible to unauthorised persons?

Which measures have already been taken to terminate the breach and limit its consequences?



Appendix 4.

Overview of Subprocessors

The Processor completes the diagram below to indicate the categories of Subprocessors with which it cooperates:

Subprocessor categories	Role within the processing operation
Subcontractors	Supporting the logistics process
Retailers	Supporting the collection and delivery process
Network partners	Supporting the logistics process abroad
Foreign Postal Parties	Supporting the logistics process abroad



Appendix 5.

Overview of transfers outside of the European Economic Area

The Processor provides an overview of transfers outside the European Economic Area below. This indicates the third country concerned, the purpose of the transfer and the appropriate safeguards that have been put in place on the basis of Article 46 of the GDPR.

Third country	Purpose of the transfer	Appropriate safeguards
Depending on the product chosen by the Processor and the destination as stated in the Agreement	Transport of shipments	Universal Postal Union/contracts with network partners