

Lodder Data Processor Agreement



A NO FUSS agreement regarding the provision of software services (hereinafter "Services Agreement") is concluded between Lodder (being Lodder Group or one of its affiliates) and Customer (being the counterparty of Lodder of the Services Contract).

During the performance of the Services Agreement, Customer provides Lodder with personal data of which Customer is the controller. Lodder shall process such personal data as part of its performance without determining the purpose and means for such processing;

The obligations of the Parties with respect to the processing of the personal data by Lodder are laid down in this Data Processor Agreement, in accordance with the Dutch Data Protection Act and from 25 May 2018 in accordance with the General Data Protection Regulation (EU) 2016/679 (hereinafter "Data Protection Legislation").

This Data Processor Agreement is concluded upon conclusion of the Services Agreement to which this agreement is an annex.

Article 1 - Definitions and interpretation

Capitalised terms used in this agreement shall have the meanings as set out below.

1.1 Agreement: means this Data Processor Agreement by and between Lodder and Customer including the Annexes.

1.2 Annex(es): means an annex to this Agreement.

1.3 Controller: means a party who determines the purposes for which and the manner in which any Personal Data are, or are to be, Processed.

1.4 Data Breach: means 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.

1.5 Data Subject(s): means the person(s) to whom personal data relate or may relate to.

1.6 Personal Data: means any information relating to an identified or identifiable natural person directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

1.7 Privacy Impact Assessment (PIA): means an assessment of the impact of an envisaged processing operations on the protection of personal data

1.8 Process/Processing: means any operation or set of operations that is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

1.9 Services Agreement: means the agreement between Lodder and Customer regarding the services delivered by Lodder to which this Agreement is an annex.

Article 2 - Assignment and Personal Data

2.1 Lodder shall Process the Personal Data for Customer according to the terms and conditions of this Agreement. Annex 1 describes the purposes and means of the Processing, the kind of Personal Data that will be Processed by Lodder and the retention period for such Personal Data. Parties shall update Annex 1 during the term of this Agreement if necessary.

Article 3 - Processing

3.1 Lodder and Customer shall Process the Personal Data fairly and lawfully, in accordance with the applicable data protection laws and regulations.

3.2 Customer shall be solely responsible for determining the purposes for which and the manner in which the Personal Data are, or are to be, Processed by Customer. Customer is liable towards the Data Subject(s) for the damage suffered as a result of any breach of the obligations referred to this Agreement, notwithstanding the obligations of Lodder arising from the Services Agreement and this Agreement. The liability of Lodder towards a Data Subject shall be limited to the Processing operated by Lodder under this Agreement.

3.3 Except as provided for by law, Lodder shall only (further) Process the Personal Data as far as necessary for the purposes of the Services Agreement and/or in accordance with the instructions of Customer.

3.4 Lodder shall only modify the Personal Data on the instructions of Customer. Customer warrants that the collected Personal Data is adequate, relevant and not excessive in relation to the purposes for which the Personal Data is transferred and further Processed.

3.5 Customer is responsible for informing the Data Subject and ensuring the rights that a Data Subject may exercise regarding their Personal Data according to the applicable data protection laws and regulations and for the communication with the Data Subject(s). Lodder shall give its reasonable cooperation to Customer to (i) grant access to Data Subjects to their Personal Data; (ii) rectify or erase Personal Data at the request of the Data Subject and/or (iii) at a request of a Data Subject present evidence of the rectification or erasing of the Personal Data. Customer shall compensate Lodder for all reasonable costs of such cooperation.

Article 4 - Subprocessors

4.1 Lodder is entitled to transfer its rights and obligations resulting from this Agreement to (a) third part(y)(ies) and/or engage (a) third part(y)(ies) ("Subprocessor").

4.2 Lodder will inform Customer duly about such transfer and/or engagement and about the identity of such Subprocessor. Such transfer and/or engagement does not affect the obligations of Lodder towards Customer in any way.

4.3 If the transfer results in the Processing taking place outside of the European Economic Area, such transfer is only permitted after prior consent of Customer. Customer shall not withhold such consent without a reasonable ground.

4.4 Lodder will impose on third parties engaged for the Processing of the Personal Data the same responsibilities and obligations as are imposed on Lodder in this Agreement. Lodder shall inform Customer if the Processing of the Personal Data shall take place outside the European Economic Area and give its full cooperation in respect to the measures that need to be taken by Customer in order to ensure compliance with applicable data protection laws and regulations.

Article 5 - Data breach, pia and security

5.1 Lodder shall inform Customer if any Data Breach has taken place. Lodder shall specify in its report the nature of the Data Breach, the probable consequences of the Data Breach for the (access to the) Personal Data affected and any measures Lodder has or will take(n) to address these consequences, to end the Data Breach and to prevent it from happening again.

5.2 If the Data Breach is likely to have negative consequences for the Data Subject, Lodder shall notify Customer of such consequence forthwith. Lodder will cooperate with Customer, if necessary, to inform the Data Subject about the Data Breach. Customer will compensate any costs of Lodder regarding such cooperation.

5.3 In the event that Customer is obliged to do a PIA pursuant to the Data Protection Legislation, Lodder will assist Customer upon request. If the PIA indicates that the processing would result in a high risk, Lodder shall assist the Customer upon request with consulting the supervisory authority.

5.4 Lodder will implement the technical and organisational security measures – having regard to the Data Protection Legislation, the state of the art and the cost of their implementation – that are necessary in order to ensure availability, integrity and confidentiality of the Personal Data and to protect the Personal Data against loss or any form of unlawful processing. These measures are described in Annex 2 of this Agreement and will comply with generally accepted security standards.

Article 6 - Confidentiality

6.1 Lodder will keep the Personal Data confidential. Where this has not been contractually concluded with its employees, agents and/or contractual parties, Lodder shall impose an obligation of confidentiality on those persons regarding the Personal Data they become aware of.

6.2 Lodder shall not, by any means, communicate the Personal Data to or make the Personal Data available to third parties, unless it has obtained Customer's prior written consent thereto or is required to do so by law.

Article 7 - Audits

7.1 Lodder enables Customer to review compliance of Lodder with this Agreement via independent auditors and at the cost of Customer, without the use of any company confidential data of Lodder and without disturbing the operations of Lodder. If the review shows that Lodder does not fully comply with its obligations under this Agreement, Lodder shall undo and/or repair the shortcomings identified by the review as soon as reasonably possible.

7.2 The aforesaid review will take place once a year at a maximum, unless there is real evidence to suggest that Lodder does not comply with its obligations under this

Agreement. Lodder shall provide Customer with all information reasonably necessary to perform the audit.

Article 8 - Changes

8.1 In the event that changes to the performance of the Services Agreement may have consequences to the Processing of Personal Data, Parties shall discuss if any amendments to this Agreement and in particular to the technical and organisational security procedures as mentioned in article 4 of this Agreement, are necessary.

8.2 Customer may issue additional, written instructions or amend the instructions as provided in this Agreement due to amendments or instructions in the applicable data protection laws and regulations. Customer shall compensate Lodder for all reasonable costs resulting from such amendments.

Article 9 - Term and termination

9.1 This Agreement will be applicable as long as Lodder Processes the Personal Data according to the Services Agreement.

9.2 Upon termination of this Agreement, Lodder shall return to Customer the documents, computer discs and other information carriers containing or carrying Personal Data. In as far as Personal Data are held or stored in a computer system or in any other form which reasonably cannot be handed over to Customer, Lodder will provide Customer with a copy of the Personal Data.

9.3 If Lodder must uphold a legal obligation to retain certain Personal Data and/or documents, computer disks or other information carriers containing or carrying Personal Data for a statutory period of time, Lodder will retain the documents, computer disks or other information carriers containing or carrying Personal Data during the applicable period.

9.4 All terms and conditions of this Agreement which are destined, whether express or implied, to survive the termination of this Agreement, including but not limited to the confidentiality and indemnification clauses, shall survive.

Article 10 - Liability and indemnification

10.1 Customer shall reimburse all damage that Lodder suffers resulting from any shortcoming by Customer of its obligations under this Agreement.

10.2 Customer shall indemnify Lodder against any claims of third parties regarding the performance of this Agreement except if and insofar as Customer proves that the damage was caused by an attributable shortcoming of Lodder in the performance of this Agreement.

10.3 Any agreed limitation of liability in the Services Agreement shall be applicable to any liability of Lodder resulting from this Agreement.

Article 11 - Applicable law and jurisdiction

11.1 This Agreement is governed by, and shall be interpreted in accordance with, the laws of the Netherlands as far as permitted by mandatory law. This Agreement exists both in Dutch as well as in English. In the event of any differences of interpretation between these versions, the Dutch version is always decisive and binding between the Parties.

11.2 The court of Rotterdam, location Rotterdam shall have exclusive jurisdiction over any disputes under or in relation to this Agreement.

Annex 1 Description processing of personal data

1. The Data that may be processed are:

- Driver names, Driver address and other contact details
- Customer contact details
- License Plate numbers
- Driver's usage of fuel
- Location of gas station where Driver takes in fuel
- Loyalty information Driver

2. The purpose for processing the Data are:

Delivery of services

3. Description of the processing and means:

Lodder will Process the Personal Data as specified above in the light of the activities to be performed under the Services Agreement. Lodder will do such using the Lodder Platform and software, based on the personal data provided by Customer using Lodder software

4. Retention period

Lodder will retain the Personal Data for a period of maximum two years after the end of the Services Contract, unless indicated otherwise by the Customer

Annex 2 Security measures

The technical and organizational security procedures and measures shall comply with applicable and generally accepted security standards. The security measures to be taken by Lodder will be the following (or comparable to these measures)

- implemented security policy, updating and implementing the updated security policy;
- implemented code of conduct;
- confidentiality clause in employment contracts;
- intruder alarm;
- secure method for storage of data files;
- logical access controls with the help of what people know, such as password or personal access code;
- logical access controls with the help of what people carry, such as a security pass;
- control on assigned rights;
- logging and controlling the access to the system (including monitoring signs of unauthorised access to the Personal Data);
- recovery measures;
- encryption of Personal Data during electronic transfer to external parties;
- compliance with the confidentiality clause of this Agreement; and
- appointing a reasonably limited number of persons charged with the Processing of Personal Data and authorized to access the Personal Data, which persons will be explicitly entitled only to perform the operations necessary to fulfil the obligations of the Services Agreement.