**DATA PROCESSING AGREEMENT BETWEEN THE LESSOR AND THE PROVIDER**

2nd edition 05/22

GUIDANCE ON PERSONAL DATA PROCESSING IN CONNECTION WITH THE LETTING OF REAL ESTATE

The Personal Data Act and the General Data Protection Regulation (“GDPR”) have a very broad scope. A large number of property industry activities will fall within the scope. Simple examples are access control and reception services, because these activities will always entail some form for *personal data processing*.

The Act applies to wholly or partly automated processing of personal data, as well as non-automated processing of personal data that are to be included in a register.

*Personal data* are any data relating to an identified or identifiable natural person. *Processing* is any operation performed on personal data, for example collection, storage, analysis or disclosure.

When an entity processes personal data on behalf of another, a data processing agreement is required. . The *data processor* is the entity that processes personal data on behalf of the data controller. It is the data controller that has the main responsibility for compliance with the statutory requirements, and one way of ensuringcompliance is to stipulate requirements in a data processing agreement as as to how the data processor may act.

GDPR Article 28 requires data processing agreements to be entered into, and lays down detailed requirements as to the contents of a data processing agreement. The said requirements form the basis for the provisions of this data processing agreement.

This data processing agreement is intended for a scenario in which the lessees are data controllers, with the lessor as data processor and the provider as the lessor’s subcontractor (sub-processor). It will normally be the lessee that decides that there shall be access control and a reception function. The lessee may generally (in theory) choose to manage these functions by itself, or to outsource these to a service provider (in this case the lessor, which will then use a third-party provider). This will give rise to a data processor/sub-processor relation, because the provider in connection with these activities will process personal data on behalf of the lessor for which the lessee has the main responsibility.

This data processing agreement may also readily be adapted to a scenario in which the lessor is itself the data controller.

Further guidance on certain provisions of this data processing agreement is found in Annex 3. More information on personal data processing provisions is found on the website of the Norwegian Data Protection Authority; www.*datatilsynet.no.*

**DATA PROCESSING AGREEMENT**

**BETWEEN**

**THE LESSOR AND THE PROVIDER**

# Background and purpose

[…](the **Lessor**) and […](the **Provider**) have on [date] entered into an agreement (the **Agreement**) regarding the provision of certain specified servicesfor [address, land no. and title no.](the **Property**).

The Lessor is using the Provider as a subcontractor for the provision of the abovementioned services to the lessee/lessees (the **Lessee**) of the Property.

This data processing agreement regulates the rights and obligations of the Lessor and the Provider in connection with the Provider’s personal data processing on behalf of the Lessee. The Lessee is the data controller, and the Lessor is the data processor for the processing of such personal data. The Provider, in its capacity of the Lessor’s subcontractor, is a so-called «sub-processor» of the personal data, and is through this data processing agreement made subject to obligations corresponding to those that the Lessor is subject to under its the agreement with the Lessee.

The purpose of the processing, the nature of the processing, the category of data subjects and the types of personal data processed are described in further detail in Annex 1.

# Obligations of the Lessor

The Lessor confirms that it has entered into a data processing agreement with the Lessee which complies with the requirements under GDPR Art. 28, and which covers the processing to be performed by the Provider on behalf of the Lessor.

The Lessor confirms that the Lessee in its agreement with the Lessor has confirmed that:

* the Lessee has a legal basis for the personal data processing; and
* the personal data are complete and accurate, thereby enabling the Lessor and the Provider to perform their duties.

The Lessor shall, in consultation with the Lessee:

* Answer requests from the data subjects on the personal data processing.
* Assess the necessity of measures as specified in Clause 3.2.1. and when needed order such measures from the Provider.

The Lessor shall have sufficient technical and organisational measures to ensure compliance with relevant requirements under applicable data protection legislation.

# Obligations of the Provider

## Instruction from the Lessor

The Provider shall only process personal data as specified in this data processing agreement unless otherwise agreed through subsequent documented instructions from the Lessor.

If the Provider must nonetheless process personal data due to mandatory law, the Provider shall, unless it is prohibited by law, inform the Lessor in advance.

The Provider shall notify the Lessor if the Provider believes that an instruction from the Lessor infringes applicable legislation.

## Information security

### Assessment of measures

The Provider shall ensure an appropriate level of security in accordance with GDPR Art. 32.

Hereunder the Provider shall ensure that the data are not made available to unauthorised persons (*confidentiality*), that the data cannot be altered unintentionally or by unauthorised persons (*integrity*), and that the data are available to approved users when needed by them to perform their duties (*availability*).

In its assessment of which technical and organisational measures shall be adopted, the Provider shall in consultation with the Lessor consider:

* Best practices
* The cost
* The nature and scope of the processing
* The context and purpose of the processing
* The severity of the risk that the personal data processing entails for the rights of the data subjects

Relevant documentation of the security measures shall be made available to the Lessor upon request.

### Assistance to the Lessor

The Provider shall provide assistance to enable the Lessor to meet its own responsibilities under its agreement with the Lessee and applicable legislation. This includes the Provider assisting the Lessor with:

* Establishing technical and organisational measures as mentioned above
* Complying with obligations to notify supervisory authorities and data subjects of the result of any breaches when required under applicable legislation.
* Carrying out data protection impact assessments when required under applicable legislation
* Conducting prior consultation of supervisory authorities when necessitated by a data protection impact assessment

The assistance shall be provided to the extent necessary for the Lessor’s needs, the nature of the processing and the information available to the Lessor.

### Requests from data subjects

The Provider shall have the technical and organisational measures required to assist the Lessor (in consultation with the Lessee) with answering queries from the data subjects, when they exercise their rights under applicable legislation.

### Compensation for assistance

Assistance as stipulated in this data processing agreement, as well as assistance in connection with specific procedures and instructions imposed by the Lessor, shall be compensated by the Lessor on the basis of time spent, in accordance with the standard terms and hourly rates of the Provider or, in the absence thereof, as specifically agreed between the parties.

## Breaches and breach notifications

Any use of personal data in contravention of established procedures, instructions from the Lessor or applicable legislation, as well as any personal data breach, shall be treated as breaches.

The Provider shall have procedures and systematic processes for the follow-up of breaches. These shall include restoration, measures to eliminate breaches and measures to prevent reoccurrence.

The Provider shall without undue delay notify the Lessor of any personal data breach or other breach of this data processing agreement. The Provider shall provide the Lessor with all information necessary to enable the Lessor and the Lessee to comply with applicable legislation and to enable the Lessee to answer queries from the Norwegian Data Protection Authority.

## Confidentiality

The Provider is subject to a duty of confidentiality with regard to personal data and any other confidential information, including, but not limited to, trade secrets. The Provider shall ensure that anyone carrying out work for the Provider and having access to or being involved in the processing of personal data (i) is subject to a duty of confidentiality and (ii) complies with all obligations under this data processing agreement.

The duty of confidentiality shall continue to apply after the termination of this data processing agreement.

## Security audits

The Provider will on a regular basis carry out security audits and compliance control of obligations under this data processing agreement. The Lessor shall upon request obtain access to reports documenting security audits and compliance.

The Provider shall by specific agreement facilitate and contribute to audits carried out by, or at the behest of, the Lessor or the Lessee. Audits of any subcontractors shall be carried out through the Provider unless otherwise specifically agreed.

## Use of subcontractors; personal data transfer outside the EU/EEA

Any subcontractor of the Provider shall be approved in writing by the Lessor after consultation of the Lessee before the subcontractor can process personal data. A list of subcontractors approved as per the date of the agreement is attached to this data processing agreement as Annex 2.

If the Provider is planning to replace or use a new subcontractor, the Provider shall notify the Lessor in writing no later than [four] weeks before such new subcontractor commences personal data processing. The notice shall include sufficient information to enable the Lessor to assess whether or not to grant approval. The Lessor shall approve the subcontractor no later than [four] weeks after the receipt of such notice. Approval shall not be withheld without just and reasonable cause. Failure to reply to such notice by the time limit shall be considered approval. If the Lessor objects to a change of subcontractor, the Provider will seek to find a different solution to the need that the subcontractor was intended to meet. If no other solution is found, affected services to the Lessor that require personal data processing from the new subcontractor will be discontinued from the time it was planned for the new subcontractor to commence its processing.

The Provider shall not use any subcontractor(er) entailing any personal data transfer outside the EU/EEA other than in accordance with specific agreement with the Lessor. If the Lessor and the Lessee approve such transfer, the Lessor shall collaborate with the Provider to ensure the lawfulness of such transfer.

If the Provider shall engage another sub-processor to carry out specific processing activities for the Lessor, such other sub-processor shall be subject to the same obligations and limitations as apply to the Provider under this data processing agreement.

# Breach of contract

In the event of breach of this data processing agreement, the relevant breach of contract provisions in the Agreement shall apply.

# Duration, termination of this data processing agreement, amendments

This data processing agreement shall enter into effect upon being signed by both parties and shall remain in effect until the expiry of the Agreement, or until the Provider’s personal data processing on behalf of the Lessor pursuant to this data processing agreement is discontinued for any other reason.

All personal data shall be returned in a standardised format on an electronic medium upon termination of this data processing agreement. The Provider shall first return and thereafter erase all personal data. The Provider shall immediately discontinue the personal data processing upon expiry of this data processing agreement.

As an alternative to having the personal data returned, the Lessor may choose to instruct the Provider to erase the personal data, unless mandatory legislation prevents the Provider from effecting such erasure. The Provider’s erasure shall be documented.

The obligations under Clauses 3.4 and 4 shall continue to apply after the termination of this data processing agreement.

The parties shall revise this data processing agreement to the extent necessary to comply with amendments to relevant legislation or orders from government authorities.

# Disputes and jurisdiction

This data processing agreement shall be governed by Norwegian law.

Any dispute shall be resolved before the courts in the jurisdiction agreed in the Agreement.

\*\*\*\*\*

*[place], [date]*

For and on behalf of the Lessor For and on behalf of the Provider

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[…] […]

[*It needs to be checked for each agreement that these categories are correct. It is a statutory requirement that the correct types of data be specified in the agreement*.]

1. **Processing activities and purpose**

The Provider will perform the following processing activities for the following purposes:

* Access control: The purpose of the Provider’s personal data processing on behalf of the Lessor is to assist the Lessee in ensuring that no unauthorised person gets access to the Property, as well as to perform technical operational follow-up and error correction.
* Reception: The purpose of the Provider’s personal data processing on behalf of the Lessor is to assist the Lessee with reception services and visitor registration.
* Parking: The purpose of the Provider’s personal data processing on behalf of the Lessor is to assist the Lessee with the administration and control of the Lessee’s parking spaces for use by its employees and/or visitors.
* Camera surveillance: The purpose of the Provider’s personal data processing on behalf of the Lessor is to assist the Lessee with ensuring the security of the Lessee’s employees and visitors, as well as to perform technical operational follow-up and error correction.
1. **Types of personal data and categories of data subjects**

The Provider will for each listed processing activity process the following types of personal data on the following categories of data subjects:

* Access control:
	+ Employees of the Lessee: Name, time and place of access.
	+ Visitors to the premises: Name, time and place of access.
* Reception:
	+ Visitors in the building: Name, telephone number, time of visit.
* Parking:
	+ Employees of the Lessee: Name, telephone number, car registration number, time of arrival and departure.
	+ Visitors to the Lessee: Car registration number, time of arrival and departure.
* Camera surveillance:
	+ Employees of the Lessee: Video recording, including images of individuals, movements at and in the vicinity of the Property, time of arrival and departure.
	+ Visitors to the Lessee: Video recording, including images of individuals, movements at and in the vicinity of the Property, time of arrival and departure.
	+ Other individuals located at or in the vicinity of the Property: Video recording, including images of individuals, movements at and in the vicinity of the Property, time of arrival and departure.
		1. Approved subcontractors

This annex specifies which subcontractors the Provider may use.

|  |  |  |
| --- | --- | --- |
| Name of subcontractor (full name of legal entity) | Date of commencement of subcontractor use | Location |
|  | (For example: From inception of the agreement) |  |

**GUIDANCE/COMMENTS**

The below contains guidance and comments to the data processing agreement. The purpose of such guidance and comments is to explain some of the provisions, and to assist the parties with their assessment of any modifications to the agreement where necessary.

**Clause 1 – Background and purpose**

Clause 1, first paragraph, requires the parties to insert the names of their businesses, the date of the agreement, and specification of what property the agreement pertains to.

Clause 1, second paragraph, outlines the purpose of, and background to, the agreement. This should be modified if the description does not fully fit the specific agreement in question. It is noted, in particular, that the description of the roles of the parties (the data controller and the data processor) needs to be modified if it is the lessor itself that is the data controller, and not the lessee.

**Clause 2 – Obligations of the Lessor**

Clause 2 lists the key duties of the «original» data processor (the lessor), which the lessor needs to ensure are fulfilled in its agreement with the lessee. Please note that this is not a complete overview of all duties under the GDPR. These are, however, the duties which it is of particular importance for the Provider (as sub-processor) to know have been fulfilled. It is recommended that both the data processor and the data controller always have an internal control system and procedures for complying with the requirements under GDPR.

**Clause 3.1 – Instruction from the Lessor**

The data processor (the lessor) may as a general rule only process personal data in accordance with an instruction from the data controller (the lessee), and GDPR Article 28 requires this to be stated in the data processing agreement. This applies correspondingly to the relationship between the data processor and the sub-processor. The main exemptions from this are when the data processor/sub-processor is required by law to take certain actions, for example to disclose data by order of the police or a court of law. It is also important to emphasise that the data processor/sub-processor shall notify the data controller (potentially via the data processor), if receiving an unlawful instruction. In other words, the sub-processor cannot, as a rule, rely on the defence that it «was only doing what the lessor/lessee told it to do». The parties should therefore consider the need for contractual regulation of the implications of a potentially unlawful instruction.

**Clause 3.2 - Information security**

It is a fundamental requirement under the GDPR that information security shall be correspondent to the risks in question. Both the data controller and the data processor/sub-processor is responsible for data security. For a standardised service it would, however, be appropriate for the data processor/sub-processor to assume principal responsibility for assessing which measures are best suited for managing the risk entailed by such service. The data controller must nonetheless attend to data protection in respect of its employees, customers, etc., and must therefore be able to consider additional measures in some cases (see Clause 3.2.2 for details on what assistance can be demanded from the lessor).

It may therefore in certain cases be necessary to include minimum data security requirements in an annex to the data processing agreement. Such will for example be the case if the data controller is of the view that it is necessary to take further measures than those proposed by the data processor. If such requirements from the data controller require more effort or resources on the part of the data processor, this may be reflected in the consideration paid.

**Clause 3.3 - Deviations and notifications thereof**

It is important for both parties to have procedures in place for preventing errors from being made, as well as procedures to deal with any errors that may nonetheless be made. Errors in the form of *personal data breach* may cause damage and inconvenience to the data subjects. The Provider must therefore in such cases provide information to the Lessor, in order to enable the Lessor to assess the significance of the breach. It is important for the lessee to carry out a risk assessment, based on its business activities. If visitor registration data from a law firm or a doctor’s surgery go astray, the implications may be quite different than if visitor registration data from a garage go astray. It is therefore the responsibility of the lessee to assess whether any given breach means that one must notify the Norwegian Data Protection Authority, the affected data subjects, as well as to carry out the actual notification, while the data processor and, if applicable, (sub-processor) is «only» required to assist.

**Clause 3.6 – Use of subcontractors; personal data transfer outside the EU/EEA**

The data processor cannot, as a general rule, use sub-processors (subcontractors that process personal data) without the specific or general permission of the data controller. For standardised services, general permission will be necessary. The data controller (the lessee) must nonetheless be able to have some influence and, as a last recourse, have the right to impose a veto. Any replacement of subcontractors (which process personal data) shall therefore always be notified, and the agreement stipulates the procedure for dealing with any objections.

The four-week time limit may be modified in any individual agreement when needed.

**Annexes 1 and 2 – details on the agreement**

The parties should jointly complete the annexes, and check that the descriptions therein are accurate for each agreement. It is important for the agreement to describe all of the purposes, types of data, as well as the data subjects. For standardised services, the provider may well assume principal responsibility for ensuring that the descriptions are accurate, since these cannot diverge very much from customer to customer.