

## Data Processing Agreement

Between

The Data Controller

and

The Data Processor

**Data Gården A/S**

CVR: 21804584

Sdr. Ringvej 44

6000 Kolding

Denmark

1	Data Processing Agreement preamble.....	3
2	The rights and obligations of the Data Controller .....	4
3	The Data Processor acts according to instructions .....	4
4	Confidentiality.....	4
5	Security of processing .....	5
6	Use of Sub-Processors .....	5
7	Transfer of data to third countries or international organisations.....	6
8	Assistance to the Data Controller .....	7
9	Notification of personal data breach .....	8
10	Erasure and return of data .....	9
11	Inspection and audit.....	9
12	The Parties' agreement on other terms .....	9
13	Commencement and termination.....	10
14	Data Controller and Data Processor contacts/contact points .....	11
Appendix A	Information about the processing .....	12
Appendix B	Terms of the Data Processor's use of sub-processors. ....	13
Appendix C	Instruction pertaining to the use of personal data .....	14
Appendix D	The Parties' terms of agreement on other subjects .....	16

## **1 Data Processing Agreement preamble**

1. This Data Processing Agreement sets out the rights and obligations that apply to the Data Processor's handling of personal data on behalf of the Data Controller.
2. This Agreement has been designed to ensure the Parties' compliance with Article 28, subsection 3 of *Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation)*, which sets out specific requirements for the content of data processing agreements.
3. The data processor's processing of personal data is fulfilling this data processing agreement.
4. If "other agreements" are entered into in relation to the Data Processing Agreement, these are mutually dependent and cannot be terminated separately. However, the data processing agreement can - without terminating "other agreements" - be replaced by another valid data processing agreement.
5. This Data Processing Agreement shall take priority over any similar provisions contained in other agreements between the Parties.
6. Four appendices are attached to this Data Processing Agreement. The Appendices form an integral part of this Data Processing Agreement.
7. Appendix A of the Data Processing Agreement contains details about the processing as well as the purpose and nature of the processing, type of personal data, categories of data subject and duration of the processing.
8. Appendix B of the Data Processing Agreement contains the Data Controller's terms and conditions that apply to the Data Processor's use of Sub-Processors and a list of Sub-Processors approved by the Data Controller.
9. Appendix C of the Data Processing Agreement contains instructions on the processing that the Data Processor is to perform on behalf of the Data Controller (the subject of the processing), the minimum security measures that are to be implemented and how inspection with the Data Processor and any Sub-Processors is to be performed.
10. Appendix D of the Data Processing Agreement contains the Parties' provisions for activities that are not contained in this Data Processing Agreement.
11. The Data Processing Agreement and its associated Appendices shall be retained in writing as well as electronically by both Parties.

12. This Data Processing Agreement shall not exempt the Data Processor from obligations to which the Data Processor is subject pursuant to the General Data Protection Regulation or other legislation.

## **2 The rights and obligations of the Data Controller**

1. The Data Controller shall be responsible to the outside world (including the data subject) for ensuring that the processing of personal data takes place within the framework of the General Data Protection Regulation and the Danish Data Protection Act.
2. The Data Controller shall therefore have both the right and obligation to make decisions about the purposes and means of the processing of personal data.
3. The Data Controller shall be responsible for ensuring that the processing that the Data Processor is instructed to perform is authorised in law.

## **3 The Data Processor acts according to instructions**

1. The Data Processor shall solely be permitted to process personal data on documented instructions from the Data Controller unless processing is required under EU or Member State law to which the Data Processor is subject; in this case, the Data Processor shall inform the Data Controller of this legal requirement prior to processing unless that law prohibits such information on important grounds of public interest, cf. Article 28, sub-section 3, para a.
2. The Data Processor shall immediately inform the Data Controller if instructions in the opinion of the Data Processor contravene the General Data Protection Regulation or data protection provisions contained in other EU or Member State law.

## **4 Confidentiality**

1. The Data Processor shall ensure that only those persons who are currently authorised to do so are able to access the personal data being processed on behalf of the Data Controller. Access to the data shall therefore without delay be denied if such authorisation is removed or expires.
2. Only persons who require access to the personal data to fulfil the obligations of the Data Processor to the Data Controller shall be provided with authorisation.
3. The Data Processor shall ensure that persons authorised to process personal data on behalf of the Data Controller have undertaken to observe confidentiality or are subject to suitable statutory obligation of confidentiality.
4. The Data Processor shall at the request of the Data Controller be able to demonstrate that the employees concerned are subject to the above confidentiality.

## **5 Security of processing**

1. The Data Processor shall take all the measures required pursuant to Article 32 of the General Data Protection Regulation which stipulates that with consideration for the current level, implementation costs and the nature, scope, context and purposes of processing and the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Controller and Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
2. The above obligation means that the Data Processor shall perform a risk assessment and thereafter implement measures to counter the identified risk. Depending on their relevance, the measures may include the following:
  - a. Pseudonymisation and encryption of personal data
  - b. The ability to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services.
  - c. The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.
  - d. A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
3. The Data Processor shall in ensuring the above – in all cases – at a minimum implement the level of security and the measures specified in Appendix C to this Data Processing Agreement.
4. The Parties' possible regulation/agreement on remuneration etc. for the Data Controller's or the Data Processor's subsequent requirement for establishing additional security measures shall be specified in Appendix D to this Data Processing Agreement.

## **6 Use of Sub-Processors**

1. The Data Processor shall meet the requirements specified in Article 28, sub-section 2 and 4, of the General Data Protection Regulation to engage another processor (Sub-Processor).
2. The Data Processor shall therefore not engage another processor (Sub-Processor) for the fulfilment of this Data Processing Agreement without the prior specific or general written consent of the Data Controller.
3. In the event of general written consent, the Data Processor shall inform the Data Controller of any planned changes regarding additions to or replacement of other data processors and thereby give the Data Controller the opportunity to object to such changes.
4. The Data Controller's requirements for the Data Processor's engagement of other sub-processors shall be specified in Appendix B to this Data Processing Agreement.

5. The Data Controller's consent to the engagement of specific sub-processors, if applicable, shall be specified in Appendix B to this Data Processing Agreement.
6. When the Data Processor has the Data Controller's authorisation to use a sub-processor, the Data Processor shall ensure that the Sub-Processor is subject to the same data protection obligations as those specified in this Data Processing Agreement on the basis of a contract or other legal document under EU law or the national law of the Member States, in particular providing the necessary guarantees that the Sub-Processor will implement the appropriate technical and organisational measures in such a way that the processing meets the requirements of the General Data Protection Regulation.

The Data Processor shall therefore be responsible – based on a sub-processor agreement – for requiring that the sub-processor at least comply with the obligations to which the Data Processor is subject pursuant to the requirements of the General Data Protection Regulation and this Data Processing Agreement and its associated Appendices.

7. A copy of such a sub-processor agreement and subsequent amendments shall – at the Data Controller's request – be submitted to the Data Controller who will thereby have the opportunity to ensure that a valid agreement has been entered between the Data Processor and the Sub-Processor. Commercial terms and conditions, such as pricing, that do not affect the legal data protection content of the sub-processor agreement, shall not require submission to the Data Controller.
8. The Data Processor shall in his agreement with the Sub-Processor include the Data Controller as a third party in the event of the bankruptcy of the Data Processor to enable the Data Controller to assume the Data Processor's rights and invoke these as regards the Sub-Processor, e.g. so that the Data Controller is able to instruct the Sub-Processor to perform the erasure or return of data.
9. If the Sub-Processor does not fulfil his data protection obligations, the Data Processor shall remain fully liable to the Data Controller about the fulfilment of the obligations of the Sub-Processor.

## **7 Transfer of data to third countries or international organisations**

1. The Data Processor shall solely be permitted to process personal data on documented instructions from the Data Controller, including as regards transfer (assignment, disclosure and internal use) of personal data to third countries or international organisations, unless processing is required under EU or Member State law to which the Data Processor is subject; in such a case, the Data Processor shall inform the Data Controller of that legal requirement prior to processing unless that law prohibits such information on important grounds of public interest, cf. Article 28, sub-section 3, para a.

2. Without the instructions or approval of the Data Controller, the Data Processor therefore cannot – within the framework of this Data Processing Agreement:
  - a. disclose personal data to a data controller in a third country or in an international organisation
  - b. assign the processing of personal data to a sub-processor in a third country
  - c. have the data processed in another of the Data Processor's divisions which is in a third country
3. The Data Controller's instructions or approval of the transfer of personal data to a third country, if applicable, shall be set out in Appendix C to this Data Processing Agreement.

## **8 Assistance to the Data Controller**

1. The Data Processor, taking into account the nature of the processing, shall, as far as possible, assist the Data Controller with appropriate technical and organisational measures, in the fulfilment of the Data Controller's obligations to respond to requests for the exercise of the data subjects' rights pursuant to Chapter 3 of the General Data Protection Regulation.

This entails that the Data Processor should as far as possible assist the Data Controller in the Data Controller's compliance with:

- a. notification obligation when collecting personal data from the data subject
  - b. notification obligation if personal data have not been obtained from the data subject
  - c. right of access by the data subject
  - d. the right to rectification
  - e. the right to erasure ('the right to be forgotten')
  - f. the right to restrict processing
  - g. notification obligation regarding rectification or erasure of personal data or restriction of processing
  - h. the right to data portability
  - i. the right to object
  - j. the right to object to the result of automated individual decision-making, including profiling
2. The Data Processor shall assist the Data Controller in ensuring compliance with the Data Controller's obligations pursuant to Articles 32-36 of the General Data Protection Regulation taking into account the nature of the processing and the data made available to the Data Processor, cf. Article 28, sub-section 3, para f.

This entails that the Data Processor should, taking into account the nature of the processing, as far as possible assist the Data Controller in the Data Controller's compliance with:

- a. the obligation to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk associated with the processing
  - b. the obligation to report personal data breaches to the supervisory authority (Danish Data Protection Agency) without undue delay and, if possible, within 72 hours of the Data Controller discovering such breach unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons
  - c. the obligation – without undue delay - to communicate the personal data breach to the data subject when such breach is likely to result in a high risk to the rights and freedoms of natural persons
  - d. the obligation to carry out a data protection impact assessment if a type of processing is likely to result in a high risk to the rights and freedoms of natural persons
  - e. the obligation to consult with the supervisory authority (Danish Data Protection Agency) prior to processing if a data protection impact assessment shows that the processing will lead to high risk in the lack of measures taken by the Data Controller to limit risk
3. The Parties' possible regulation/agreement on remuneration etc. for the Data Processor's assistance to the Data Controller shall be specified in Appendix D to this Data Processing Agreement.

## **9 Notification of personal data breach**

1. On discovery of personal data breach at the Data Processor's facilities or a sub-processor's facilities, the Data Processor shall without undue delay notify the Data Controller.

The Data Processor's notification to the Data Controller shall, if possible, take place within 12 hours after the Data Processor has discovered the breach to enable the Data Controller to comply with his obligation, if applicable, to report the breach to the supervisory authority within 72 hours.

2. According to Clause 9.2., para b, of this Data Processing Agreement, the Data Processor shall – taking into account the nature of the processing and the data available – assist the Data Controller in the reporting of the breach to the supervisory authority.

This may mean that the Data Processor is required to assist in obtaining the information listed below which, pursuant to Article 33, sub-section 3, of the General Data Protection Regulation, shall be stated in the Data Controller's report to the supervisory authority:



- a. The nature of the personal data breach, including, if possible, the categories and the approximate number of affected data subjects and the categories and the approximate number of affected personal data records
- b. Probable consequences of a personal data breach
- c. Measures which have been taken or are proposed to manage the personal data breach, including, if applicable, measures to limit its possible damage

## **10 Erasure and return of data**

1. On termination of the processing services, the Data Processor shall be under obligation, at the Data Controller's discretion, to erase or return all the personal data to the Data Controller and to erase existing copies unless EU law or Member State law requires storage of the personal data.

## **11 Inspection and audit**

1. The Data Processor shall make available to the Data Controller all information necessary to demonstrate compliance with Article 28 of the General Data Protection Regulation and this Data Processing Agreement, and allow for and contribute to audits, including inspections performed by the Data Controller or another auditor mandated by the Data Controller.
2. The procedures applicable to the Data Controller's inspection of the Data Processor are specified in Appendix C to this Data Processing Agreement.
3. The Data Controller's inspection of sub-processors, if applicable, shall as a rule be performed through the Data Processor. The procedures for such inspection are specified in Appendix C to this Data Processing Agreement.
4. The Data Processor shall be required to provide the supervisory authorities, which pursuant to applicable legislation have access to the Data Controller's and Data Processor's facilities, or representatives acting on behalf of such supervisory authorities, with access to the Data Processor's physical facilities on presentation of appropriate identification.

## **12 The Parties' agreement on other terms**

1. (Separate) terms relating to the consequences of the Parties' breach of this Data Processing Agreement, if applicable, shall be specified in Appendix D to this Data Processing Agreement.
2. Regulation of other terms between the Parties shall be specified in Appendix D to this Data Processing Agreement.

### 13 Commencement and termination

1. This Data Processing Agreement shall become effective on the date of both Parties' signature to the Agreement.
2. Both Parties shall be entitled to require this Data Processing Agreement renegotiated if changes to the law or inexpediency of the provisions contained herein should give rise to such renegotiation.
3. The Parties' agreement on remuneration, terms etc. in connection with amendments to this Data Processing Agreement, if applicable, shall be specified in Appendix D to this Data Processing Agreement.
4. This Data Processing Agreement may be terminated according to the terms and conditions of termination, incl. notice of termination in relation to common general law on the subject and this Data Processing Agreement.
5. This Data Processing Agreement shall apply as long the processing is performed. Regardless of "other agreements" or the termination of the data processing agreement itself, the data processing agreement will remain in effect until the termination of the processing and the deletion of the data by the data processor and any sub-data handlers.

#### 6. Signature

On behalf of the Data Controller

Name:

Position:

Date:

Signature: \_\_\_\_\_

On behalf of the Data Processor

Name: [Jes Olesen]

Position: Owner/CEO

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## 14 Data Controller and Data Processor contacts/contact points

1. The Parties may contact each other using the following contacts/contact points:
2. The Parties shall be under obligation continuously to inform each other of changes to contacts/contact points.

### On behalf of the Data Processor

Name: Jes Olesen  
Position: Owner/CEO  
Telephone number: +45 75 50 20 35  
E-mail: jes@datagaarden.dk

### On behalf of the Data Controller

Name:  
Position:  
Telephone number:  
E-mail:

Name:  
Position:  
Telephone number:  
E-mail:

## **Appendix A Information about the processing**

**The purpose of the Data Processor's processing of personal data on behalf of the Data Controller is:**

Data Gården A/S collects and stores data as described in the Data Processing Agreement and this appendix to perform service and support on the data controller's IT systems. The collection proceeds solely for this purpose and is not given to third parties.

Types of personal data processed in connection with delivery of the service:

- a) General personal information. Name, telephone number, mail, passwords and a like on employees.
- b) Sensitive Personal Information: Data Gården A / S does not have or stores any personal information.
- c) Other Personal Information: Data Gården A / S neither has or stores any other personal information.
- d) Data Gården A/S are on in possession of CPR numbers and does not store CPR related information.

The Data Processor's processing of personal data on behalf of the Data Controller may be performed when this Data Processing Agreement commences. Processing has the following duration:

The processing is not time restricted. And will remain intact until the Data Processing Agreement is cancelled or terminated by one of the parties.

## Appendix B Terms of the Data Processor's use of sub-processors.

### B.1 Terms of the Data Processor's use of sub-processors, if applicable

"The Data Processor has the Data Controller's general consent for the engagement of sub-processors. The Data Processor shall, however, inform the Data Controller of any planned changes regarding additions to or replacement of other data processors and thereby give the Data Controller the opportunity to object to such changes. Such notification shall be submitted to the Data Controller a minimum of 14 days prior to the engagement of sub-processors or amendments coming into force. If the Data Controller should object to the changes, the Data Controller shall notify the Data Processor of this within 7 days of receipt of the notification. The Data Controller shall only object if the Data Controller has reasonable and specific grounds for such refusal."

### B.2 Approved sub-processors

The Data Controller shall on commencement of this Data Processing Agreement approve the engagement of the following sub-processors:

Name	CVR-NR:	Address	Description of service/usage
Microsoft Danmark	13612870	Kanalvej 7 2800 Kongens Lyngby	Microsoft Office 365 including, One drive for Business. Office applications, filesharing and mail services. Microsoft is GDPR Compliant.
Microsoft Danmark	13612870	Kanalvej 7 2800 Kongens Lyngby	Microsoft Azure – Data Backup. Microsoft is GDPR Compliant.
IT Relation A/S (WWI)	27001092	Idyl 9 A 6000 Kolding	Online data backup. IT Relation A/S does not have access to data.
F-Secure Danmark A/S	32559409	Rued Langgaards Vej 8 (2nd Floor) 2300 København S	F-Secure Protection Service for Business Antivirus software is centralized administered. F-Secure does not have access to data.
TeamViewer GMBH	DE 245 838 579	Kuhnbergstr. 16 73037 Göppingen Germany	Remote control tool used on the data controller's computer. Teamviewer does not have access to data.
Keepit A/S	30806883	Per Henrik Lings Allé 4, 5 2100 København Ø	Online data backup managed by Data Gården A/S. Keepit does not have access to data.
Trust Box A/S	37588822	Jagtvej 113 H 2. Sal 2200 København N	TrustBox / Data Gården Backup is an online data backup. Trust Box A/S does not have access to data.

The Data Controller shall on the commencement of this Data Processing Agreement specifically approve the use of the above sub-processors for the processing described for that party. The Data Processor shall not be entitled – without the Data Controller’s explicit written consent – to engage a sub-processor for ‘different’ processing than the one that has been agreed or have another sub-processor perform the described processing.

## **Appendix C Instruction pertaining to the use of personal data**

### **C.1 The subject of/instruction for the processing**

The Data Processor’s processing of personal data on behalf of the Data Controller shall be carried out by the Data Processor performing the following:

The processing of data is only related to the support, operation and maintenance of the data controller's IT systems and technical issues. Only the necessary employees have access and process the data controller's data in connection with the delivery of the requested service.

### **C.2 Security of processing**

The level of security shall reflect:

### **C.3 Specific technical and organizational safety requirements:**

- Data Gården A/S buildings are protected with rolling lights and alarms.
- Video surveillance.
- Smoke cannon.

The following specific requirements are imposed on the Data Processor Technical Security:

- High password security.
- Encryption on portable devices containing personal data
- Firewalls.
- Antivirus software.

1.3 The following specific requirements are imposed on the Data Processor Organizational Security:

- Only relevant personnel have access to personal information

- Staff are continuously taught data security.

#### **C.4 Storage period/erasure procedures**

Personal data are stored with the Data Processor until the Data Controller requests that the data are erased or returned.

#### **C.5 Instructions or approvals regarding the transfer of personal data to third countries**

**This section is not relevant because Data Gården A/S has no relation to third countries.**

If the data controller has not provided an instruction or approval for the transfer of personal data to a third country in this section or subsequent written notice, the data processor must not make such a transfer within the essence of the data processing agreement.

#### **C.6 Procedures for the data controller's supervision of the processing performed by the data processor**

The data controller or a representative of the data controller may make a physical oversight regarding the compliance with this data processing agreement with the Data Processor [in agreement with the contact person].

The data controller's possible expenses in connection with a physical supervision shall be covered by the data controller. However, the data processor is required to allocate the resources (essentially the time) necessary for the data controller to carry out the supervision.

#### **C.7 Further procedures for the supervision of processing performed by any sub-processors**

The data processor is responsible for the supervision of the authorized sub-processors.

If extraordinary supervision of a subcontractor is requested in addition to the supervision already performed by the data processor, compensation for the commonly stated hourly rate may be claimed.

## **Appendix D The Parties' terms of agreement on other subjects**

### **D.1 Assistance for Data Responsible Section 9, paragraph 3 (Data Processing Agreement).**

The data processor is entitled to normal compensation after the agreed hourly rates, to assist the data controller in case of a data breach.

### **D.2 The following paragraphs are added to protect both parties from an economic standard point.**

Each party is responsible in accordance with general applicable law, except for this section.

Data Processor and Data Controller disclaim any liability for direct or indirect loss, consequential loss, including operating loss, loss of goodwill, loss of savings and revenue, including costs for recovering lost revenue, loss of interest, software or hardware errors and loss of data.

#### **Force Majeure**

1. The Data Processor cannot be held responsible for circumstances commonly referred to as force majeure, including but not limited to war, riot, terror, uprising, strike, fire, natural disasters, currency restrictions, import or export restrictions, interruption of general interference, interruption of or failure of energy supply, public computer systems, public data centers and communication systems, long-term illness of key employees, hacker attacks, ransomware, viruses, network crashes and the occurrence of force majeure at sub-contractors / sub-processors.
2. In case of force majeure, the Parties are entitled to extend the agreed delivery or performance. Force majeure may be enforced at most with the number of working days of the force majeure situation and it is assumed that the party claiming force majeure must notify the other party without undue delay.
3. As soon as the obstacle has ceased, each of the Parties continue under the Data Processing Agreement as they were before force majeure was claimed.