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

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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 entityprocesses personal data on behalf of another, a data processing agreement is required. The *data processor* is the business 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 ensuring compliance is to stipulate requirements in a data processing agreement 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 lessee is the data controller, and the lessor is the data processor that processes data on behalf of the lessee. 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). This will give rise to a data processor relation, because the lessor in connection with these activities will process personal data for which the lessee has the main responsibility.

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.*

**APPENDIX […] TO STANDARD LEASE FOR OFFICE AND INDUSTRIAL PREMISES/BUILDINGS**

**DATA PROCESSING AGREEMENT**

**BETWEEN**

**THE LESSOR AND THE LESSEE**

# Background and purpose

[…](the **Lessor**) and […](the **Lessee**) have on [date] entered into an agreement (the **Lease**) for the lease of [premises/building] at [address, land no. and title no.](the **Property**).

The Lessor will in connection with operation of the Property obtain access to and process personal data, for example through access control, reception services, etc. The Lessor processes these personal data on behalf of the Lessee. This data processing agreement regulates the rights and obligations of the Lessor and the Lessee in connection with the Lessor’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 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 Lessee

The Lessee confirms that the Lessee:

* Has a legal basis for the personal data processing.
* Is responsible for ensuring that the personal data are complete and accurate, thereby enabling the Lessor to perform its duties.

The Lessee shall:

* 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 Lessor.

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

# Obligations of the Lessor

## Instruction from the Lessee

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

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

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

## Information security

### Assessment of measures

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

Hereunder the Lessor 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 whicht technical and organisational measures shall be adopted, the Lessor shall in consultation with the Lessee 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 Lessee upon request.

### Assistance to the Lessee

The Lessor shall provide assistance to enable the Lessee to meet its own responsibilities under applicable legislation. This includes the Lessor assisting the Lessee 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 Lessee’s needs, the nature of the processing and the information available to the Lessor.

### Requests from data subjects

The Lessor shall have the technical and organisational measures required to assist 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 Lessee, shall be compensated by the Lessee on the basis of time spent, in accordance with the standard terms and hourly rates of the Lessor 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 Lessee or applicable legislation, as well as any personal data breach, shall be treated as breaches.

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

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

## Confidentiality

The Lessor 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 Lessor shall ensure that anyone carrying out work for the Lessor 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 Lessor will on a regular basis carry out security audits and compliance control of obligations under this data processing agreement. The Lessee shall upon request obtain access to reports documenting security audits and compliance.

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

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

Any subcontractor shall be approved in writing by 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 Lessor is planning to replace or use a new subcontractor, the Lessor shall notify the Lessee in writing no later than [four] weeks before such new subcontractor commences personal data processing. The notice shall include sufficient information to enable the Lessee to assess whether or not to grant approval. The Lessee 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 Lessee objects to a change of subcontractor, the Lessor 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 Lessee 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 Lessor shall not use any subcontractor(er) entailing any personal data transfer outside the EU/EEA other than in accordance with specific agreement with the Lessee. If the Lessee approves such transfer, the Lessor shall collaborate with the Lessee to ensure the lawfulness of such transfer.

If the Lessor shall engage another data processor to carry out specific processing activities for the Lessee, such other data processor shall be subject to the same obligations and limitations as apply to the Lessor 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 Lease 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 Lease, or until the Lessor’s personal data processing on behalf of the Lessee 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 Lessor shall first return and thereafter erase all personal data. The Lessor shall immediately discontinue the personal data processing upon expiry of this data processing agreement.

As an alternative to having the personal data returned, the Lessee may choose to instruct the Lessor to erase the personal data, unless mandatory legislation prevents the Lessor from effecting such erasure. The Lessor’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 Lease.

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*[place], [date]*

For and on behalf of the Lessor For and on behalf of the Lessee

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[…] […]

[*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 Lessor will perform the following processing activities for the following purposes:

* Access control: The purpose of the Lessor’s personal data processing on behalf of the Lessee 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 Lessor’s personal data processing on behalf of the Lessee is to assist the Lessee with reception services and visitor registration.
* Parking: The purpose of the Lessor’s personal data processing on behalf of the Lessee 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 Lessor’s personal data processing on behalf of the Lessee 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 Lessor 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 Lessor 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 some 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.

**Clause 2 – Obligations of the Lessee**

Clause 2 lists the key duties of the lessee in its role as data controller. 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 lessor (the data processor) to know have been fulfilled. It is recommended that one as data controller always have an internal control system and procedures for complying with the requirements under GDPR.

**Clause 3.1 – Instruction from the Lessee**

The data processor may as a general rule only process personal data in accordance with an instruction from the data controller, and GDPR Article 28 requires this to be stated in the data processing agreement. The main exemptions from this are when the data processor (the lessor) 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 shall notify the data controller if receiving an unlawful instruction. In other words, the lessor cannot, as a rule, rely on the defence that it «was only doing what the 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 are responsible for data security. For a standardised service it would, however, be appropriate for the data 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 ensure data protection for 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 may 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 lessor must therefore in such cases provide information to the lessee, in order to enable the lessee to assess the significance of the breach for its employees, customers, guests, etc. 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.

**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 lessor may well assume principal responsibility for ensuring that the descriptions are accurate, since these cannot diverge very much from lessee to lessee.