STANDARD ALL-INCLUSIVE LEASE FOR OFFICE AND INDUSTRIAL PREMISES (NEW/REHABILITATED PREMISES)

2nd edition 05/22

# THE LESSOR

Name/Firm […] (the **Lessor**)

Social security or business registration number […]

# THE LESSEE

Name/Firm […] (the **Lessee**)

Social security or business registration number […]

# THE PROPERTY

Address […]

Land no. […], title no. […], unit no. […], section no. […] in the municipality of […], municipality no. […] (the **Property**)

# THE LEASED OBJECT

The leased object comprises areas for the exclusive use of the Lessee (the **Exclusive Area**), a proportional share of the common areas and technical rooms of the Property (the **Common Area**) and external areas. The Exclusive Area, including any exclusive external areas and area allocations, is shown in **Appendix 2** (area specification and drawings). The leased object shall be in conformity with the agreed requirement specification; **Appendix 3**.

The Exclusive Area, together with the share of the Common Area, measures approximately […] m2 GFA in total (the **Leased Object**). The Exclusive Area accounts for approximately […] m2 GFA thereof.

The following shall apply with regard to parking spaces:

[Delete the non-applicable alternative.]

* + 1. The leased object does not include parking spaces.
		2. The leased object includes parking spaces as specified, and subject to the terms set out, in **Appendix […]**.

All areas are specified in accordance with NS 3940:2012. Any errors in the area specifications shall neither give rise to any right of rent adjustment, nor result in any amendments to the other provisions of this lease.

# ACTIVITIES CONDUCTED BY THE LESSEE

The Leased Object shall only be used for […].

No change in the activities conducted at the Leased Object, including engagement in other, related activities, shall be permitted without the prior written consent of the Lessor. Consent shall not be withheld without just cause. Any increase in the Value Added Tax burden of the Lessor as the result of the changed activities on the part of the Lessee shall constitute such just cause, unless the Lessee undertakes to indemnify the Lessor in respect of the Lessor’s losses and costs in accordance with Clause 10 and furnishes collateral deemed – in the opinion of the Lessor – to adequately secure its obligations. Furthermore, maintaining the activity profile/activity mix of the Property shall also constitute such just cause.

# HANDOVER/NOTICE OF DEFECTS

The Leased Object is handed over in accordance with Clause 4.1 above.

The Lessor is responsible for the Leased Object being lawful for the use/activities specified in Clause 5.1 as per Handover, including with regard to requirements in the Planning and Building Act and private law matters. The Lessee is itself responsible for own internal, installation and building work which is to be carried out by the Lessee by agreement. The Lessee is also itself responsible for any requirements applicable to, or approvals of, the Leased Object/the Lessee’s activities that do not pertain to technical building and construction matters or zoning matters.

A handover inspection shall be performed in connection with Handover of the Leased Object. A handover inspection record shall be prepared, and signed by both parties on site. A handover inspection record form is attached as **Appendix […]**.

The Lessee shall give written notice of any damage and defects, etc., within a reasonable period of time after it ought to have discovered these. Any circumstances that had come to the knowledge of the Lessee as per Handover cannot subsequently be invoked as defects.

The Lessor shall at Handover provide the Lessee with guidance concerning the use of technical equipment/installations at the Leased Object that are to be used by the Lessee. Moreover, the Lessor shall at Handover provide operating manuals/instructions for technical equipment and installations at the Leased Object. The Lessee shall adhere to the Lessor’s operating manuals/instructions as applicable at any given time throughout the Lease Term.

# LEASE TERM

The lease term shall be from […] (Handover) to […] (the Lease Term), after which the lease shall lapse without any need for a notice of termination. The lease cannot be terminated during the Lease Term.

[Extension options, if any - see supplementary wording for alternative regulation]

The time limit for sending a request to vacate the premises after the end of the Lease Term shall be six months.

# THE RENT, ETC.

The annual rent payable for the Leased Object (the Rent) shall be NOK […] (exclusive of Value Added Tax). In addition shall be paid Value Added Tax to the extent that the conditions for adding Value Added Tax to the Rent have been met, cf. Clause 10.

1/4 / 1/12 *[delete as applicable]* of the Rent shall fall due for payment in advance on the
1st of each quarter/month *[delete as applicable]*, in the amount of NOK […] (exclusive of Value Added Tax).

The Rent includes:

* The Lessee’s portion of the joint costs of the Property. Examples of joint costs that are included in the Rent are set out in **Appendix […]**.
* The services specified in **Appendix […]**.

The Lessor shall issue invoices to the Lessee with such contents as are required under the applicable regulatory framework, and specifying the Lessor’s account number for the payment of the Rent. Payment is not deemed to have taken place until the amount is credited to the Lessor’s account.

The Lessor may outsource the operation of the Property to a management company. The Lessor shall nonetheless remain responsible vis-à-vis the Lessee for the performance of its obligations with regard to operation of the Property in conformity with this lease.

[Delete the non-applicable alternative.]

* + 1. Energy for, and cleaning of, the Exclusive Area is included in the Rent.
		2. The Lessee shall pay, directly and for its own account, cleaning of the Exclusive Area (including internal cleaning of windows) and caretaker services for its own use. In the event that a designated energy meter is installed, the Lessee shall also pay, directly and for its own account, energy for the Exclusive Area. If no designated meter is installed, energy for the Exclusive Area shall be apportioned and charged to the Lessee on a proportional basis, unless otherwise agreed between the parties.

8.7 In the event of late payment of the Rent, late payment interest shall be paid pursuant to Act of 17 December 1976 No. 100 or any statute replacing the said Act. The Lessor shall be entitled to impose a fee in respect of any payment reminders.

# RENT ADJUSTMENT

The Rent shall be adjusted on 1 January of each year, in line with any changes in the consumer price index published by Statistics Norway or, if the said index is abolished, another corresponding public index. The Rent shall not, however, be adjusted below the Rent agreed on the date of entering into the lease.

The original lease index value is the index value as per the month of […] in the year of […]. Rent adjustments shall be based on changes from the original lease index value to the most recent known index value as per the adjustment date.

The Lessee is hereby given notice that annual rent adjustments will be made.

In the event of any government intervention (price freeze, etc.) that limits the rent that could otherwise have been charged by the Lessor under this lease, the adjusted Rent shall apply from such date and to such extent as is permitted under the applicable regulations.

# VALUE ADDED TAX

The parties have as per contract signing proceeded on the assumption that

[Delete as applicable]

* + 1. the Leased Object shall in its entirety be included in the Lessor’s voluntary registration in the Value Added Tax Register.
		2. parts of the Leased Object shall be included in the Lessor’s voluntary registration in the Value Added Tax Register. Dimensioned drawings and details concerning the size of the area to be included in the Lessor’s voluntary registration are attached as **Appendix […]**.
		3. the Leased Object is not to be included in the Lessor’s voluntary registration in the Value Added Tax Register.

To the extent that the Leased Object shall be included in the Lessor’s registration pursuant to Clause 10.1, the Lessee warrants that the conditions for registration are met from the time of contract signing and throughout the Lease Term.

The Lessor shall be entitled to add Value Added Tax at the rate applicable at any given time to the Rent and any other costs relating to any areas that are to be included in the Lessor’s registration pursuant to Clause 10.1. The same applies to any areas that might become included in the Lessor’s registration as the result of mandatory real estate lease registration being introduced by statute.

If the Lessee has, in accordance with Clause 24, obtained consent for the sublease of any areas that are to be included in the Lessor’s registration pursuant to Clause 10.1, and the subleased areas can still be included in the Lessor’s registration in the Value Added Tax Register, the Lessee shall, if not already registered in the Value Added Tax Register, immediately apply for voluntary registration of the sublease. If the Lessee is already registered in the Value Added Tax Register in respect of other activities, the Lessee shall include a provision in the sublease agreement to the effect that the sublease shall be deemed to be subject to Value Added Tax, and shall also invoice the consideration payable in respect of the sublease with the addition of Value Added Tax.

The Lessee shall immediately inform the Lessor of any circumstances that may result in changes to the Value Added Tax status of all or part of the Leased Object. The Lessee shall also within 14 days complete in writing the Lessor’s annual lessee declarations concerning the Lessee’s use of the Leased Object during the year and any building works carried out on the Leased Object by the Lessee. The Lessee shall also gather corresponding documentation from any sublessees.

Upon discharge of the lease, irrespective of the reason therefore, the Lessee and any sublessees shall retain their own adjustment obligations in respect of any building works carried out on the Leased Object.

The Lessee shall indemnify the Lessor in respect of any loss that may be incurred by the Lessor, including any reduced right of deduction and any reversal/adjustment of deducted input Value Added Tax, as well as any interest, penalty tax and other costs associated with such loss, as the result of changes to rules governing the use/activities of the Lessee or changes to such use on the part of the Lessee, subleases, corporate/organisational changes, formal deficiencies or omissions, etc. In calculating the amount of the Lessor’s loss, any tax implications on the part of the Lessor shall be taken into account.

Any claim as the result of the provisions of this Clause 10 shall fall due for payment upon demand. However, any claim as the result of the Lessor’s obligation to reverse/adjust deducted input Value Added Tax shall fall due for payment no earlier than 14 days before the due date for the Lessor’s payment obligation via-à-vis the State.

# FURNISHING OF COLLATERAL

[Delete as applicable.]

**A**

The Lessee shall furnish an ordinary guarantee from a financial institution conducting activities in Norway under a licence granted by the Norwegian authorities, or an alternative guarantee approved by the Lessor, in respect of the timely performance of the obligations of the Lessee under the lease.

The amount of such guarantee shall correspond to […] months’ rent including Value Added Tax to the extent implied by Clause 10. The Lessor may require a proportional adjustment of the guarantee amount in connection with any rent adjustment. The guarantee shall remain in effect, and be irrevocable on the part of the Lessee and the guarantor, throughout the Lease Term, as well as for three months after vacation of the premises. The guarantee shall not include any preclusive notice periods. The guarantee shall be governed by Norwegian law. Any dispute relating to the guarantee shall be resolved before the courts in the jurisdiction of the Property.

**B**

The Lessee shall furnish a deposit by paying the deposit amount into an escrow account in the name of the Lessee with the bank that receives the Rent payments. The deposit shall secure the timely performance of the obligations of the Lessee under the lease.

The amount of such deposit shall correspond to […] months’ rent including Value Added Tax to the extent implied by Clause 10. The Lessor may require a proportional adjustment of the deposit amount in connection with any rent adjustment. The Lessee may request payment from the bank of any interest accrued on the account.

If the Lessor is claiming payment from the escrow account due to breach of contract on the part of the Lessee, the bank shall notify the Lessee of such claim, stating that the amount will be paid to the Lessor unless the Lessee documents, within five weeks of such notice being sent, that it has brought legal action concerning the claim. Such notice shall be sent to the Lessee’s stated address or, if applicable, stated electronic mailbox. If the bank does not receive such documentation within the time limit, and the Lessor has not revoked its claim, the bank shall pay the amount to the Lessor in final discharge of the obligations of the bank in respect of such amount.

If the Lessee has brought legal action, the bank may only pay the amount to the Lessor in final discharge of the obligations of the bank in respect of such amount with the written consent of the Lessee or following a final and binding judgment or other ruling with the same effect as a final and binding judgment.

If the Lessee, after the expiry of the lease, requests payment of the deposit, in excess of accrued interest, the bank shall notify the Lessor in writing of such claim, stating that the deposit, including accrued interest, will be paid to the Lessee unless the Lessor documents, within five weeks of such notice being sent, that it has brought legal action against the Lessee concerning any claim under the lease. The bank may use the last known address or electronic mailbox for such notice. If the bank does not receive such documentation within the time limit, and the Lessee has not revoked its claim, the bank shall pay the amount to the Lessee in final discharge of the obligations of the bank in respect of such amount.

**C**

The Lessee shall furnish such collateral as specified in **Appendix […]**.

**D**

The Lessee shall furnish no collateral.

The collateral shall be furnished no later than […].

Any breach of the provisions in this Clause 11 shall be considered a material breach that entitles the Lessor to terminate the lease, unless the Lessee has remedied the situation within 14 days of a written notice from the Lessor.

# USE OF THE LEASED OBJECT BY THE LESSEE

The Lessee shall handle both the Leased Object and the remainder of the Property with due care.

The Lessee shall familiarise itself, and comply, with any public law and private law provisions that have been or may become enacted and that apply to the lease. The Lessee shall during the Lease Term be responsible vis-à-vis all government authorities for ensuring that the Lessee’s use of the Leased Object complies with all public law requirements applicable at any given time.

The Lessee shall during the Lease Term contribute to environmentally-friendly use and operation of the Property and the Leased Object, and shall comply with any requirements and procedures implied by the Property’s environmental certification, if any, as applicable at any given time.

The Lessee shall, at the request of the Lessor, document the existence of an internal control system for the activities conducted by the Lessee that complies with the requirements applicable at any given time.

The Leased Object shall not be used in any way that impairs the reputation or appearance of the Property. Nor shall the activities at the Leased Object inconvenience other lessees or neighbours, through dust, noise, smell, vibration or otherwise. Smoking is not permitted at the Leased Object. Any rooms containing water and/or drain pipes must be kept heated, such as to prevent freezing. Any costs incurred in remedying, as well as any damages payable in connection with, such matters shall be for the account of the Lessee.

All waste must be placed in the waste bins/recycling receptacles at the Property, unless it has been agreed that the Lessee shall itself handle waste/recycling. The Lessee must itself remove any waste of an extraordinary nature or quantity at its own expense. If it fails to do so, the Lessor may remove such waste for the account of the Lessee. All waste handling shall comply with the government requirements applicable at any given time.

The Lessee shall not use the Common Area for its own purposes (for example sales, posters, storage, etc.)

The prior written consent of the Lessor shall be obtained if the Lessee would like to increase the capacity/supply of energy, water or air, or the drainage capacity, etc., beyond that intended for the use of the Lessee as per the date of entering into the lease.

# ACCESS TO THE EXCLUSIVE AREA FOR THE LESSOR, ETC.

The Lessee shall grant the Lessor access to the Exclusive Area during office/business hours on all days, for purposes of servicing, repair, maintenance, inspection, appraisal, refurbishment work, etc. The Lessee shall also grant the Lessor access to the Exclusive Area for purposes of carrying out environmental measures, including the control/measurement of energy consumption, etc. The Lessee shall be given reasonable notice. Whenever deemed necessary in order to prevent or limit any damage to the Property, the Lessor shall be entitled to obtain access to the Exclusive Area without such notice.

The Lessee shall furthermore facilitate the collection by the Lessor of measurement and consumption data from the Lessee’s suppliers of energy, water, drainage, waste disposal, etc., if any. This is in order to enable the Lessor to meet public law and private law requirements and expectations in relation to labelling and certification, consumption and efficiency improvement, as well as environmentally-friendly use and operation of the Property. The Lessee shall, within 14 days of being requested to do so by the Lessor, authorise the Lessor and any service providers designated by the Lessor to collect consumption data, including the collection of measuring point ID and data for energy consumption. The authorisation shall be given in the manner stipulated by the Lessor.

# EXTERNAL MAINTENANCE AND REPLACEMENTS

The Lessor shall arrange and pay for all external building maintenance and the replacement of technical installations, such as lifts, ventilation plants, fire-fighting facilities, heating plants, sun awning systems, etc., when these can no longer be maintained in an economical manner.

The Lessor shall ensure that the Common Area and the technical installations at the Property are kept in the same state as upon Handover, although ordinary wear and tear must be accepted by the Lessee. The Lessor shall arrange for maintenance, operation and cleaning of the Common Area and external areas. Costs under this Clause 14.2 are included in the Rent.

The Lessor shall ensure that the Leased Object complies, throughout the Lease Term, with all public law requirements applicable to the Property/Leased Object, and shall cover the costs associated therewith.

The Lessor’s works shall be carried out at ordinary intervals and in compliance with applicable regulations and standards of good craftsmanship. The works shall be based on environmentally-efficient solutions and be carried out with environmentally-friendly products and materials.

The Lessor shall not be responsible for the maintenance or replacement of any devices installed at the Leased Object by the Lessee.

The Lessee shall not be entitled to any damages or rent reductions in respect of non-material interruptions to the supply of water, energy, air, etc.

# INTERNAL MAINTENANCE

The Lessor shall arrange and pay for all internal maintenance of, and all internal replacements at, the Leased Object, including maintenance and replacement of entrance doors, gates and windows, as well as floor, wall and ceiling surfaces. The maintenance obligation shall include both repairs (emergency maintenance) and periodical maintenance.

The Lessor’s responsibilities also include the repair of any damage to the Leased Object, including any damage caused by the Lessee and/or anyone else to whom the Lessee has granted access to the Property, as well as any damage caused by burglary and/or vandalism on the Leased Object. Any broken windowpanes shall immediately be replaced by new ones. The costs of repairing damage pursuant to this Clause 15.2 shall be covered by the Lessee as invoiced by the Lessor.

The Lessor shall arrange and pay for the repair and maintenance of any signs, etc., that the Lessor has permitted it to install pursuant to Clause 17.

The Lessor shall arrange and pay for the operation and maintenance of grease and oil separators or similar devices if these are required for the activities conducted by the Lessee.

The Lessor’s works shall be carried out at ordinary intervals and in compliance with applicable regulations and standards of good craftsmanship. Replacements shall at the latest be made when maintenance can no longer be performed in an economical manner. The works shall be based on environmentally-efficient solutions and be carried out with environmentally-friendly products and materials.

# THE LESSOR’S WORK ON THE PROPERTY/LEASED OBJECT

The Lessor may carry out any work for purposes of the maintenance or renewal, including environmental measures, of the Property/Leased Object. The Lessor may also perform any refurbishment work, including any additions, extensions, etc., outside the Exclusive Area. Changes to the area and structure of the Common Area may only be effected if such changes are not material. The Lessee shall facilitate the routing of cords, ducts and pipes, etc., to other parts of the Property through the Exclusive Area, without obstruction by the interior fittings, or similar, of the Lessee.

The Lessee shall accept such work without any damages or rent reductions, unless the Lessee suffers material inconvenience.

The Lessee shall be given reasonable notice of all work pursuant to this Clause 16. The Lessor shall ensure that the work causes the minimum possible inconvenience to the Lessee.

Any work pursuant to this Clause 16.4 shall be based on environmentally-efficient solutions and be carried out with environmentally-friendly products and materials.

# THE LESSEE’S CHANGES TO THE LEASED OBJECT

The Lessee shall make no changes to the Leased Object without the prior written consent of the Lessor. Consent shall not be withheld without just cause. If consent is granted, the Lessor shall at the same time, if requested by the Lessee, specify in writing whether the Lessee shall, upon vacation of the premises, reverse, in full or in part, the changes made. Unless otherwise agreed in writing, all changes carried out by the Lessee shall be reversed upon vacation of the premises. Any additional costs relating to operation and maintenance of the Property/Leased Object as the result of the changes carried out by the Lessee shall be covered by the Lessee.

The Lessee shall not install business signs or sun awnings without the prior written consent of the Lessor. Consent shall not be withheld without just cause. Any such signs or awnings shall be in the customary manner in terms of size, design and location, based on the nature and type of the activities and the Property, which size, design and location shall require the approval of the Lessor. The Lessee shall pay for its trade name to be added to common directional signs by specific agreement with the Lessor.

The Lessee shall be responsible for obtaining any necessary government permits and for otherwise complying with all government requirements applicable to any work performed pursuant to this Clause 17. All applications shall require the approval of the Lessor. Upon completion of the work, documentation of such work shall be handed over to the Lessor, together with any government approvals.

Any changes pursuant to this Clause 17 shall be based on environmentally-efficient solutions and be carried out with environmentally-friendly products and materials.

# INSURANCE

Each of the parties shall keep their assets/interests insured.

The Lessor shall insure the Property.

The Lessee shall insure its own interior fittings, fixtures and furnishings, movables, machinery, data, goods, operating loss/interruption and liability.

If the activities conducted by the Lessee result in any increase in the insurance premiums pertaining to the Property or any new safety requirements from the Lessor’s insurer that entail investments, the Lessee shall cover the costs. The Lessee shall notify the Lessor of any circumstances and/or changes with regard to the activities that may have an impact on the insurance premium pertaining to the Property.

Each of the parties may require the disclosure of the insurance agreement of the opposite party.

# FIRE/DESTRUCTION

If the Leased Object is destroyed by fire or other accidental event, the Lessor may waive all of its rights and obligations under the lease.

# BREACH OF CONTRACT ON THE PART OF THE LESSOR

The Lessee may claim rent reduction pursuant to Section 2-11 of the Tenancy Act as the result of delays or defects. As far as defects are concerned, this is conditional upon the defect not being remedied by the Lessor pursuant to the provisions of Section 2-10 of the Tenancy Act. The Lessee shall give written notice of any damage and defects, etc., within a reasonable period of time after the Lessee ought to have discovered these.

The Lessee may claim damages under Section 2-13 of the Tenancy Act in respect of any direct loss resulting from any delay or defect. As far as defects are concerned, this is conditional upon the defect not being remedied by the Lessor pursuant to the provisions of Section 2-10 of the Tenancy Act. Indirect loss is not covered. The damages during the Lease Term shall not exceed 12 months’ rent, unless the Lessor has acted with intent or gross negligence. In the event of any extension of the Lease Term, a new, corresponding limitation shall apply with regard to any loss during the extension period.

The Lessee shall not be entitled to withhold rent to secure any claim that the Lessee has or may get against the Lessor as the result of any defect or delay.

If the Lessee wishes to invoke prolonged or repeated breach of contract on the part of the Lessor as a basis for termination, it shall be required to give prior written notice to the effect that the lease may be thus terminated unless such breach is discontinued. Section 2-12 of the Tenancy Act shall also apply.

# BREACH OF CONTRACT ON THE PART OF THE LESSEE/EVICTION

The Lessee shall be liable for damages in respect of any damage caused intentionally or negligently by the Lessee itself or by anyone who is in the service of the Lessee, as well as by sublessees, customers, suppliers, contractors and/or anyone else to whom the Lessee has granted access to the Property. The liability for damages also includes any costs incurred in the extermination/destruction of vermin, pests, etc.

The Lessee accepts mandatory eviction if the Rent or any supplementary payments agreed are not paid, cf. Section 13-2, Sub-section 3 (a), of the Enforcement Act. The Lessee accepts mandatory eviction upon the expiry of the Lease Term, cf. Section 13-2, Sub-section 3 (b), of the Enforcement Act.

The Lessor may terminate the lease in the event of material breach thereof, upon which termination the Lessee shall immediately vacate the Leased Object. The provision in Clause 20.4 shall apply correspondingly in the event of termination on the part of the Lessor.

If the Lessee is evicted or vacates at the request of the Lessor due to breach of contract, or vacates the Leased Object as the result of bankruptcy, the Lessee shall pay the Rent for any such period as may remain of the Lease Term. The payment obligation shall only apply to the extent that the loss incurred by the Lessor is not covered through a substitute lease for the Leased Object. The Lessee shall also pay any costs resulting from eviction, legal proceedings and tidying/cleaning of the Leased Object. The same applies to any costs involved in reversing the Lessee’s works and any costs involved in establishing a substitute lease.

# VACATION OF THE PREMISES

Upon vacation of the premises, the Lessor shall immediately be granted access to the Exclusive Area.

Upon vacation of the premises, the Lessee shall return the Leased Object in a tidy and clean state, with all keys/entrance passes. Any changes made by the Lessee during the Lease Term are governed by the regulations in Clause 17.

Upon vacation of the premises, the Lessor may charge the Lessee for the cost of repairing any damage and the cost of any additional cleaning that may be required.

The Lessor shall be entitled, for the last 12 months before vacation of the premises, to erect signs on the frontage with information to the effect that the Leased Object will become available for rent. The Lessee shall, during the same period and by prior notice, grant prospective lessees access to the Exclusive Area for 3 days per week during ordinary office/business hours.

The Lessee shall remove its possessions at its own expense no later than on the last day of the Lease Term. Any possessions that have not been removed are deemed to have been abandoned, and shall accrue to the Lessor. The Lessor may discard or remove any rubbish and possessions that the Lessee has left behind, for the account of the Lessee.

# REGISTRATION/GRANTING OF SECURITY INTERESTS

The lease shall not be registered in the Register of Land Titles and Land Charges without the prior written consent of the Lessor. Consent shall not be withheld without just cause. A lease thus registered shall have no right of priority advancement, and shall concede priority to any new mortgage deeds that the Lessor may arrange to have registered on the Property. The Lessee shall assist with the implementation of such priority concession. The Lessee grants the Lessor an irrevocable authorisation to delete such lease registration on the expiry date of the lease. Any costs associated with such registration and deregistration of the lease shall be for the account of the Lessee.

No security interest shall be granted in the lease without the prior written consent of the Lessor. Consent shall not be withheld without just cause. The Lessor may make such granting of a security interest subject to conditions. The Lessee grants the Lessor an irrevocable authorisation to delete such security interests on the expiry date of the lease.

# SUBLEASE

Sublease of the Leased Object, in full or in part, shall not be permitted without the prior written consent of the Lessor. Consent shall not be withheld without just cause. Any increased Value Added Tax burden on the part of the Lessor as the result of the sublease would always constitute just cause, unless the Lessee undertakes to indemnify the Lessor for any loss and costs incurred by the Lessor as the result of the sublease in accordance with Clause 10, and furnishes what is deemed by the Lessor to be adequate collateral in respect of its obligations. Furthermore, maintaining the activity profile/activity mix of the Property shall also constitute such just cause.

A failure to respond to an application for consent under the provisions of this Clause 24 shall not be construed as consent.

# ASSIGNMENT

The Lessee may not assign the lease, in full or in part, without the prior written consent of the Lessor. Consent may be withheld at the unfettered discretion of the Lessor.

The following shall also be considered assignment of the lease: i) a person with determinative influence over the Lessee losing such influence (including by way of merger or demerger), or ii) a new person obtaining determinative influence over the Lessee (including by way of merger or demerger). Determinative influence shall have the same meaning as in Section 1-3 (2), second sentence, of the Private Limited Companies Act. Section 1-3 (4) of the Private Limited Companies Act shall apply correspondingly. This Clause 25.2 shall not apply to companies that are listed on a regulated market, or upon intra-group reorganisation with unchanged ownership.

The Lessee shall not, without the prior written consent of the Lessor, participate in any merger or demerger that materially impairs the ability of the Lessee to perform its obligations under the lease. Consent may be withheld at the unfettered discretion of the Lessor.

A failure to respond to an application for consent under the provisions of this Clause 25 shall not be construed as consent.

If the Lessor assigns its rights and obligations under the lease, the Lessee shall furnish new collateral in favour of the new owner in accordance with Clause 11.

# ENVIRONMENTAL MEASURES

## The parties shall cooperate in enhancing and evolving the environmental standard of the Leased Object during the Lease Term, by for example carrying out environmental measures. Any measures that the parties agree to carry out shall be regulated in a separate environmental agreement.

# HUMAN RIGHTS, MONEY LAUNDERING AND CORRUPTION, ETC.

## The parties shall conduct their activities in such a manner that violations of basic human rights do not occur and that decent wages and working conditions are ensured. The parties shall, furthermore, take reasonable precautions to prevent money laundering, corruption and influence trading in relation to procurement agreements, tenders and political decisions, etc.

## In order to attend to these obligations, the parties shall establish internal controls tailored to their activities.

## The parties have a right of access to each other’s documentation and systems for purposes of attending to their obligations under this Clause 27, and shall immediately and of their own accord notify each other in writing of any non-compliance therewith.

# DATA PROTECTION

## The Lessor may as part of its letting of the Property process personal data as a data controller (not on behalf of the Lessee). Further details on such processing are provided in the Lessor’s privacy notice.

## The Lessor may also process personal data on behalf of the Lessee as part of its letting of the Property. This implies that the Lessor may process personal data on the Lessee’s employees, visitors, contract workers or other users. The Personal Data Act does in such circumstances require a data processing agreement to be entered into between the data processor (the Lessor) and the data controller (the Lessee). Such data processing agreement (the Data Processing Agreement) is attached as Appendix […].

# OTHER DATA (THAT ARE NOT PERSONAL DATA)

## The Lessor has the right to collect and make use of the data gathered by the Lessor in connection with the use and operation of the Property. This includes, but is not limited to, copying, disclosing, processing, analysing, etc. The Lessor will anonymise data to ensure that individuals cannot be identified, and will use such anonymised data in aggregated form during and after the Lease Term to provide and develop services relating to the letting and use of commercial property.

# FIRE PREVENTION COORDINATION AGREEMENT

## The parties have simultaneously with this lease entered into a fire prevention coordination agreement, which is attached as Appendix […].

# SPECIAL PROVISIONS/PROVISOS

[…]

# RELATIONSHIP TO THE TENANCY ACT

The following provisions of the Tenancy Act shall not apply: Sections 2-15, 3-5, 3-6, 3-8, 4-3, 5-4, Sub-section 1, 5-8, Sub-sections 1 to 4, inclusive, 7-5, 8-4, 8-5, 8-6, Sub-section 2, and 10-5. Moreover, this lease shall take precedence in all cases where its provisions differ from the non-mandatory provisions of the Tenancy Act.

# GOVERNING LAW AND DISPUTE RESOLUTION

This lease shall be governed by Norwegian law.

Any dispute relating to the lease shall be resolved before the courts in the jurisdiction of the Property.

# APPENDICES TO THE LEASE

Appendix 1: Certificate of Incorporation/proof of identity for the Lessor and the Lessee, as well as any powers of attorney

Appendix 2: Drawings

Appendix 3: Requirement specification

Appendix […]: [Special regulations for parking spaces]

Appendix […]: Handover inspection record form

Appendix […]: [Examples of joint costs that are included in the Rent]

Appendix […]: [Service specification]

Appendix […]: [Drawings with specification of areas included in the Value Added Tax registration]

Appendix […]: [Specifically agreed collateral arrangement]

Appendix […]: [Environmental Agreement]

Appendix […]: [Data Processing Agreement]

Appendix […]: Fire Prevention Coordination Agreement

# PLACE/DATE

[…]

# SIGNATURE

This lease is signed in duplicate, with the Lessor and the Lessee receiving one copy each. If the lease has been arranged via an estate agent, it is signed in triplicate, with the Lessor, the Lessee and the estate agent receiving one copy each.

for and on behalf of the Lessor for and on behalf of the Lessee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Lessor’s representative] [Lessee’s representative]

Below are proposals for supplementary wordings, alternative wordings and appendices to, as well as comments on, the standard wording above. The organisations emphasise that these wordings are intended as examples. These must always be carefully tailored to each lease

**CONTENTS**

Clause 4 Alternative wording – Area table

Clauses 6, 12 and 14 Comments on responsibility for public law requirements

Clause 7 Supplementary wording for extension clauses

Clause 8 Suggested wording – Appendix concerning Joint Costs that are included in the Rent

Clause 10 Comments on the Value Added Tax provision

Clause 11 Suggested contract and guarantee wording for parent company guarantee

Clause 18 Supplementary wording if the Lessee is self-insured

Clause 19 Supplementary wording concerning fire and destruction

Clause 21 Public sector lessees and enforcement

Clause 26 Supplementary wording concerning environmental agreement

Clause 27 Alternative, expanded wording concerning human rights, money laundering, corruption, etc.

Clause 33 Suggested contract wording concerning arbitration

**CLAUSE 4** - **THE LEASED OBJECT**

Alternative wording – Area table

4.2 The leased object (the **Leased Object**) is comprised of the following areas:

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of leased area** | **Exclusive Area****m2 GFA** | **Share of Common Area****m2 GFA** | **Total leased area** **m2 GFA** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **Total area of****the Leased Object** |  |  |  |

**CLAUSES 6, 12 AND 14 - RESPONSIBILITY FOR PUBLIC LAW REQUIREMENTS - COMMENTS**

The lease is premised on a distinction between technical building and construction requirements and zoning requirements laid down by public law, on the one hand, and other requirements laid down by public law as the result of the activities conducted at the leased object, on the other hand. By “technical building and construction requirements” are meant any requirements implied by the Planning and Building Act, including the technical building and construction regulations, fire protection requirements and other provisions which pertain to the physical and technical characteristics/qualities of the building.

Under Clause 6.2, the lessor is responsible for the leased object being lawful for the use/activities specified in Clause 5.1 of the lease as per handover, including with regard to requirements in the Planning and Building Act and private law matters. This implies that the leased object shall be in conformity with those technical building and construction requirements laid down by public law as per handover that have to be complied with in order for the lessee to be able to use the leased object for the purpose specified in Clause 5. The lessor is also responsible for the agreed use of the leased object falling within the scope of the permitted use of the property under zoning plans or other government decisions, e.g. permits for change of use, as well as for that no private law matters, e.g. registered encumbrances on the property, commonhold byelaws, etc., prevent such use. Any public law requirements as per handover which relate to the lessee’s activities/use of the leased object, and which do not pertain to technical building and construction matters or to zoning matters, are the responsibility of the lessee. These may include, for example, specific workplace requirements that are not met through the building works, but through mobile installations/safety measures. However, public law requirements in relation to lighting and ventilation, toilets, etc., fall under the responsibility of the lessor.

The lessor is also responsible for the leased object being, throughout the lease term, in conformity with any technical building and construction requirements laid down by public law, cf. Clause 14.6. This also includes any new technical building and construction requirements laid down by public law that may be imposed on the leased object during the lease term.

The lessee is responsible, both as per handover and during the lease term, for public law requirements applicable to any building or internal/installation work carried out by the lessee, cf. Clauses 6.2 and 14.5.

Examples:

The lessee is going to use the leased object as a nightclub. As per handover, the lessor is responsible for ensuring that the leased object complies with those technical building and construction requirements laid down by public law that are applicable as the result of the intended use as specified in Clause 5, such as emergency exit requirements, ventilation, etc. The lessor is also responsible for any requirements for universal design, such as requirements for the premises to be equipped with a wheelchair ramp, accessible toilet, etc.

The lessee is responsible for public law requirements as the result of the nightclub use/activities, such as keeping emergency exits unblocked, obtaining a licence to serve intoxicating drinks, etc., cf. Clause 12.2.

If premises are leased for office operations, the lessor will be responsible for ensuring that such premises can be used as offices. This implies that the lessor will have to upgrade the ventilation plant if ventilation is inadequate. The same applies to fire protection requirements. The Lessor is also responsible for compliance with the fire safety requirements applicable to the premises/building.

The apportionment of responsibilities between the lessor and the lessee, as far as public law requirements are concerned, is illustrated in the drawing below (does not apply to any building or internal/installation work performed by the lessee, as the lessee has sole responsibility therefore):



**CLAUSE 7 - SUPPLEMENTARY WORDING FOR EXTENSION CLAUSES**

Version A:

7.3 The Lessee shall be entitled to extend the Lease Term for a period of […] years on the same terms as under this lease. If the Lessee wishes to exercise such option, this shall be notified in writing to the Lessor no less than [12] months prior to the expiry of the Lease Term.

Version B:

7.3 The Lessee shall be entitled to extend the Lease Term for a period of […] years on the same terms as under this lease, subject, however, to the Rent being adjusted to market rent. If the Lessee wishes to exercise such option, this shall be notified in writing to the Lessor no earlier than [18] months prior to, and no later than [12] months prior to, the expiry of the Lease Term.

7.4 If the parties have not, within 6 weeks of the option to extend the Lease Term having been exercised by notice to the Lessor, reached agreement as to what constitutes the market rent, such market rent shall be determined by an appraisal commission with final and binding effect for the parties. The parties shall appoint one commission member each. The appointed commission members shall be appraisers/commercial real estate agents with detailed knowledge of the commercial property market in […]. The parties shall each cover 50 % of the costs associated with establishing and completing the commission proceedings.

[Comment: One might also here envisage a regulation requiring the parties to submit their own market rent estimates, with the parties only sharing the costs if the ruling of the appraisal commission lies within a specific range between these two estimates.]

7.5 The parties shall appoint their commission members no later than 8 weeks after the exercise of the option. The commission members appointed by the parties shall appoint the chairperson of the commission. If the commission members fail to reach agreement on the appointment of the chairperson, such chairperson shall be appointed by the chairperson of the Forum for Commercial Real Estate Agents (or another corresponding organisation/entity).

7.6 The commission shall, no later than 10 weeks after the exercise of the option, carry out an inspection of the Leased Object, as well as receive the input of the parties in a simple hearing. Each of the parties shall at the hearing be given sufficient time to communicate their views as to what constitutes the market rent, as well as to present such documentation as the parties may wish to refer to.

7.7 In determining the market rent, the commission shall define what would have been the applicable market rent if a corresponding lease had been entered into in the ordinary manner, as per the date on which the commission makes its ruling. The commission shall for such purposes attach weight to all relevant considerations, including the location and condition of the Leased Object, the date of commencement of the extension period, the duration of the extension period, etc. The ruling of the commission shall be issued no later than 2 weeks after the completion of the abovementioned hearing, and shall be sent to the parties in the form of a written statement specifying the relevant market rent.

7.8 The commission’s determination of market rent pursuant to Clause 7.7 shall not constitute arbitration. If the determination of market rent also raises any legal issues on which the parties are not in agreement, the appraisal commission shall only address these to the extent that the parties jointly request it to do so. In such case, Act of 14 May 2004 No. 25 relating to Arbitration shall be applicable, to the extent not otherwise agreed in this Clause as far as concerns any matter on which the provisions of the Arbitration Act are non-mandatory.

7.9 The market rent as specified by the commission shall thereafter be the Rent as per the date of commencement of the extension period.

**CLAUSE 8 - SUGGESTED WORDING – APPENDIX CONCERNING JOINT COSTS**

The below listing is intended as examples of joint costs that will be included in the Rent if such measures are on offer, and not as a specification of what shall be included as per the commencement of the lease. The contents may change during the Lease Term, for example as the result of the introduction of new services or public law requirements.

* Energy for lifts, cooling plant, ventilation plant, hot water storage tanks, external lights, heating cables in rain gutters, fire-safety installations, gate control facilities, security devices, heating and illumination of the Common Area (including staircases), and other installations in the Common Area.
* Other common services that are not charged to individual lessees based on their own consumption.
* Municipal charges, including water, sewage, sweeping, waste disposal and any other charges that may be imposed/applied.
* Property tax
* Cleaning and waste disposal, including cleaning of staircases and the Common Area, handling/cleaning, etc., of mats in the Common Area (including staircases), extermination/destruction of vermin, pests, etc., external window cleaning, cleaning of sun awning equipment, removal of tagging/graffiti, as well as the renting, transportation and emptying of waste skips, etc.
* Inspection, servicing and maintenance of lifts, sanitary installations, cooling plant, ventilation plant, all fire-safety installations (including alarms and security devices), gates, heating plant, the internal Common Area, the external Common Area, windows, sun awning equipment, etc., including caretaker services.
* Reception services, guard services.
* Provision of other services, including gardening and other tidying/maintenance of external areas, removal of snow from external areas, parking spaces, pavements and roofs, transportation of snow from the Property, sweeping and cleaning of the said areas, external caretaker services, etc.

**CLAUSE 10 – COMMENTS ON THE VALUE ADDED TAX PROVISION**

Concerning Clause 10.1:

It is here specified what portion of the Leased Object the parties have as per contract signing assumed will be included in the lessor’s voluntary real estate lease registration in the Value Added Tax Register.

In order for an area to be included in the lessor’s voluntary registration, such area must be used in one of the following ways:

a) for activities registered under the Value Added Tax Act;

b) by government entities under the supreme control of a municipal council, a county council or another council or board under the Municipality Act or special municipal legislation; or

c) by inter-municipal and inter-county entities organised under the Municipality Act or special municipal legislation.

Any areas leased for private activities that qualify for compensation, for example private schools and nurseries, **cannot** be included in the lessor’s registration. The same applies to any areas to be used by the lessee to meet housing or welfare needs, for example employee housing and gyms.

If an area is used, at the same time, both for purposes that meet the conditions for being included in the lessor’s registration and for purposes that are not included; so-called ”mingling areas”, such area may as a main rule be included in the lessor’s registration. However, this is subject to the condition that the lessee would have had a right of deduction or compensation with regard to such area in the event that the lessee had itself owned the premises. If the VATable turnover of a lessee in relation to a mingling area would not normally exceed 5 % of such lessee’s total turnover relating to the relevant area during the course of a financial year, the said lessee would have had no such right of deduction, and the area cannot be included in the lessor’s registration. However, the said restriction shall not apply if the turnover of the lessee is principally (i.e. no less than 80 %) in the form of financial services that are exempted from Value Added Tax.

Alternative A should be ticked if the parties have assumed that the leased object in its entirety is to be included in the lessor’s voluntary registration. Alternative B should be ticked if only parts of the leased object are to be included. Dimensioned drawings with specification of the size of the area shall in such case be attached to the lease.

Alternative C should be ticked if the parties have assumed that no part of the leased object is to be included in the lessor’s voluntary registration.

NB! An ordinary voluntary registration includes, as a main rule, all leases entered into by the relevant lessor with enterprises that meet the conditions for inclusion in a voluntary registration. If the lessor and the lessee agree to exclude an area from the lessor’s voluntary registration, although such area meets the conditions for inclusion, specific notice to such effect must therefore be given to the Tax Office. However, this does not apply to enterprises that are voluntarily registered by proclamation (see explanation concerning Clause 10.4), since proclamation only encompasses the specific lease proclaimed.

Concerning Clause 10.2:

The specification, in Clause 10.1, of what portion of the leased object it has been assumed will be included in the lessor’s voluntary registration as per contract signing forms the basis for what Value Added Tax status the lessee warrants that the leased object shall have throughout the lease term. Any deviation from the assumed Value Added Tax status will, as a main rule, be the responsibility of the lessee, cf. Clause 10.7, with the lessee being liable for the lessor’s loss as the result of any changes in use, subleases, regulatory amendments pertaining to the use/activities of the lessee, etc. However, deviations from the assumed Value Added Tax status as the result of regulatory amendments that do not specifically pertain to the use/activities of the lessee shall be the responsibility of the lessor.

Concerning Clause 10.3:

This provision implies that the lessor is only entitled to add Value Added Tax on the rent in respect of those areas that the parties have assumed will be included in the lessor’s voluntary registration pursuant to Clause 10.1, cf. the explanation concerning Clause 10.1 above. The lessor cannot add Value Added Tax for areas the parties have assumed will not be included in the lessor’s voluntary registration, even if such areas meet the conditions for inclusion in such registration. This applies both in case said areas met the conditions already at contract signing (but it was nonetheless decided not to include these) and in case the Value Added Tax status of said areas changes during the lease term. If the lessor wants to include such areas in the voluntary registration it must be based on an agreement with the lessee; the lessor cannot decide this unilaterally. The sole exemption from this concerns any areas that become included in the lessor’s registration as the result of mandatory real estate lease registration being introduced by statute. The lessor may in such cases add Value Added Tax when invoicing the rent, etc.

Please recall that notice must be given to the Tax Office in respect of any areas one decides not to include in voluntary registration despite the conditions for such inclusion being met.

Concerning Clause 10.4:

Note that the lessee needs to apply for voluntary registration in the Value Added Tax Register in respect of the sublease unless the lessee is already registered in the Value Added Tax Register in respect of other VATable activities. The same applies to the sublessee in the event of any sub-sublease. There must be an ***unbroken chain of voluntary registrations*** between the Lessor and the ultimate sublessee. If the lessee is registered in the Value Added Tax Register in respect of other VATable activities, voluntary registration may be effected by way of so-called proclamation. Proclamation is done by including a provision in the sublease agreement to the effect that the sublease shall be deemed to be subject to Value Added Tax, and then adding Value Added Tax when invoicing the rent and other services, as well as recording such rent as VATable sales in the accounts.

**CLAUSE 11 – SUGGESTED CONTRACT AND GUARANTEE WORDING WHERE A PARENT COMPANY GUARANTEE IS USED INSTEAD OF GUARANTEES AS MENTIONED IN CLAUSE 11**

Contract wording:

The Lessee shall furnish a parent company guarantee as specified below the signature line of this lease agreement, in respect of the timely performance of the obligations of the Lessee under this lease. The guarantee shall be governed by Norwegian law. Any dispute relating to the guarantee shall be resolved before the courts in the jurisdiction of the Property.

Guarantee wording:

[…], business registration number […], guarantees the timely performance by the Lessee of all its obligations under the lease.

**CLAUSE 18 – SUPPLEMENTARY WORDING IF THE LESSEE IS SELF-INSURED**

If the lessee is self-insured, the following sentence may be added in Clause 18.1:

The Lessee is self-insured. Consequently, the Lessee is under no obligation to arrange insurance, but its liability nonetheless corresponds to that stipulated in this Clause 18.

**CLAUSE 19 – SUPPLEMENTARY WORDING CONCERNING FIRE AND DESTRUCTION**

19.2 If the Lessor does not exercise its right under Clause 19.1, the Lessee shall not be entitled to terminate the lease for breach if:

A) the Leased Object is repaired/rebuilt by the Lessor no later than […] months after the damage occurred;

B) the Lessor offers the Lessee, during this rebuilding period, replacement premises with such location, size and construction as to enable the Lessee to conduct its activities in an almost normal manner); and

C) the Lessor pays all costs associated with relocation to the replacement premises and return to the Leased Object after the rebuilding period.

19.3 The Lessee shall in such cases continue to lease the Leased Object (or such part of it as has not been used during the repair/rebuilding period) and resume full payment of Rent under this lease from the date on which repair/rebuilding is completed. The Lessee shall pay ordinary market rent for any replacement premises during such period as these are used, although such rent shall not exceed the Rent applicable under this lease at any given time.

**CLAUSE 21 – PUBLIC SECTOR LESSEES**

Claims against central government bodies are not enforceable, cf. Section 1-2 of the Enforcement Act. Clause 21.2 may be deleted if the lessee is a central government body. As far as other public sector lessees are concerned, the provisions need to be specifically examined from the perspective of Section 1-2 of the Enforcement Act.

**CLAUSE 26 - SUPPLEMENTARY WORDING CONCERNING ENVIRONMENTAL AGREEMENT**

If the parties wish to enter into an environmental agreement as per the signing of the lease, the following wording may be inserted in Clause 26:

26.1 The parties shall cooperate in enhancing and evolving the environmental standard of the Leased Object during the Lease Term, by carrying out the environmental measures set out in **Appendix** **[…]** (the **Environmental Agreement**). In case of conflict between this lease and the Environmental Agreement concerning matters falling within the scope of the Environmental Agreement, the provisions of the Environmental Agreement shall take precedence.

**CLAUSE 27 - ALTERNATIVE, EXPANDED WORDING**

27.1 The parties shall conduct their activities in such a manner that violations of basic human rights do not occur and that decent wages and working conditions are ensured. In order to attend to these obligations, the parties shall establish internal controls tailored to their activities.

27.2 This implies, *inter alia*, that the parties shall actively and systematically:

 (i) prevent work-related crime, such as human trafficking, child labour and social dumping, especially by ensuring fair wages and good working conditions for employees, including employees of subcontractors;

 (ii) ensure freedom of association and prevent discrimination; and

 (iii) comply with health, environmental and safety requirements.

27.3 The parties shall, furthermore, take reasonable precautions to prevent money laundering, corruption and influence trading in relation to procurement agreements, tenders and political decisions, etc.

27.4 The parties are presumed to have implemented preventive measures to avert breach of their obligations under this Clause 27.

27.5 The parties have a right of access to each other’s documentation and systems for purposes of attending to their social and human rights responsibilities.

27.6 The parties shall immediately and of their own accord notify each other in writing of any non-compliance with their obligations under this Clause.

27.7 The parties [alternatively only the Lessee] shall guarantee that no person and/or legal entity that owns or otherwise controls the company (directly or indirectly) is included on any UN or EU sanction list. If a person and/or legal entity that owns or controls the Lessor or the Lessee (directly or indirectly) is included on such a list, the other party shall be informed immediately.

27.8 If any person and/or legal entity that owns or otherwise controls the company (directly or indirectly) is included on any UN or EU sanction list, this constitutes a material breach of the lease that entitles the other party to terminate the lease, unless the situation has been remedied after a written notice stipulating a reasonable time limit for taking such remedial action.

**CLAUSE 33 – SUGGESTED CONTRACT WORDING CONCERNING ARBITRATION**

33.1 This lease shall be governed by Norwegian law.

33.2 Any dispute relating to, or having its origin in, this lease, shall be resolved by arbitration pursuant to the Act of 14 May 2004 No. 25 relating to Arbitration. The arbitral tribunal shall comprise three arbitrators, of whom the parties shall appoint one arbitrator each. The arbitrators appointed by the parties shall appoint the third arbitrator, who shall be the chairperson of the arbitral tribunal. The chairperson of the arbitral tribunal shall be a Norwegian lawyer. In the absence of agreement as to the identity of the third arbitrator, such arbitrator shall be appointed by the Chief District Court Judge of the Oslo District Court.

33.3 The arbitration shall take place in […], and the language of arbitration shall be Norwegian.

33.4 The arbitral proceedings shall be deemed to have commenced when one party sends a request to the opposite party to the effect that the dispute be resolved by arbitration. The arbitration proceedings and the ruling of the arbitral tribunal shall be subject to a duty of confidentiality, and the parties shall enter into, as soon as the arbitral proceedings have commenced, a separate agreement confirming this.