

**DATA PROCESSOR AGREEMENT**

Pursuant to the applicable Norwegian personal data legislation and regulation (EU) 2016/679 of 27th April 2016, Articles 28 and 29, cf. Article 32-36, the following agreement is entered into

**[*Name of project or product*]**

between

.……………………….

 (data controller)

and

………………………….

 (data processor)

*The contract text must be tailored to each individual service/project and service provider. Text marked in yellow or text in italics should be removed and/or replaced with relevant text, possibly choosing one of several options.*

## 1. Purpose of the agreement

The purpose of the agreement is to regulate the rights and obligations under the applicable personal data legislation, and regulation (EU) 2016/679 of 27th April 2016 in respect of the protection of physical persons in connection with the processing of personal data and the free exchange of such data (GDPR).

The agreement is intended to ensure that personal data is not processed illegally, wrongfully, or processed in ways that result in unauthorised access, alteration, erasure, damage, loss, or unavailability.

The agreement governs the data processor’s processing of personal data on behalf of the data controller, including collection, registration, compilation, storage, disclosure or combinations of these, in connection with the use of/processing in (name of the service/project).

In the event of conflict, the terms of this Agreement will take precedence over the data processor’s privacy policy, or terms of any other agreement entered into between the data processor and the data controller in connection with the use of/processing in (service/project).

**2. Limiting clause**

The purpose of the data processor’s processing of personal data on behalf of the data controller is (fill in the purpose).

Personal data that the data processor processes on behalf of the data controller may not be used for any other purpose without the prior approval of the data controller.

## The data processor may not transfer personal data covered by this agreement to partners or other third parties without the prior approval of the data controller, cf. section10 of this agreement.

## 3. Instructions

The data processor will follow the written and documented instructions for the processing of personal data in (name of service/project) which the data controller has determined will apply.

The data processor is obliged to comply with all obligations under the applicable personal data legislation governing the use of (name of service/project) for the processing of personal data.

The data processor is obliged to notify the data controller if it receives instructions from the data controller that are in conflict with the provisions of the applicable personal data legislation.

*Comment: Detailed instructions to the data processor may be attached as an appendix to the data processor agreement.*

**4. Types of information and data subjects**

The data processor processes the following personal data on behalf of the data controller:

*Comment: Give a brief summary (preferably point by point) of the main categories of personal data the service provider (data processor) processes on behalf of the institution/business (data controller).*

*Comment: Provide a brief summary of the information the data processor registers and stores in connection with use of the service, such as the use of cookies, logs, back-ups.*

The personal data applies to the following data subjects:

*Comment: Provide a brief summary of whom the information pertains to, for example, students and staff at the institution.*

## 5. The rights of registered subjects

The data processor is obliged to assist the data controller in safeguarding the rights of registered subjects in accordance with applicable personal data legislation.

The rights of the data subjects include, but not limited to, the right to information on how his or her personal data is processed, the right to request access to personal data, the right to request corrections to, or erasure of their own personal data, and the right to require restriction of processing of their personal data.

To the extent relevant, the data processor will assist the data controller in maintaining the registered subject’s right to data portability and the right to object to automated decision-making, including profiling.

The data processor is liable for damages to the registered subject if errors or omissions by the data processor inflict financial or non-financial loss on the registered subject as a result of infringement of their rights or privacy protection.

**6. Satisfactory data security**

The data processor will implement appropriate technical, physical and organisational safety measures to safeguard the personal data covered by this agreement from unauthorised or unlawful access, alteration, erasure, damage, loss, or unavailability.

The data processor will document its own security organisation, guidelines and routines for security, risk assessments and established technical, physical or organisational security measures. The documentation will be made available to the data controller on request.

The data processor will establish continuity- and contingency plans for effective handling of serious security incidents. The documentation will be made available to the data controller on request.

The data processor will document the training of its own employees in data security. The documentation will be made available to the data controller on request.

*Comment: There may be a need to specify the most important safeguards that the data processor has implemented, possibly referring to documents or publications that explain how the data processor works with data security, and what safeguards are established for the service in question. These may be incorporated into the agreement, or as an appendix to the agreement.*

**7. Confidentiality**

Only employees of the data processor, who need to access personal data that is processed on behalf of the data controller in connection with their work, may be granted such access. The data processor is required to document guidelines and routines for control of access. The documentation will be made available to the data controller on request.

The processor shall ascertain that employees of the data processor have a duty of confidentiality in respect of documentation and personal data to which they gain access in accordance with this agreement. This provision also applies after termination of the agreement.

Norwegian legislation may limit the scope of the duty of confidentiality for employees of the data processor and third parties.

**8. Access to security documentation**

The data processor is obliged to provide the data controller, upon request, with access to all security documentation that is necessary for the data controller to be able to meet its obligations under the applicable personal data legislation.

The data processor is obliged to provide the data controller, upon request, with access to other relevant documentation that allows the data controller to assess whether the data processor complies with the terms of this agreement.

The data controller has a duty of confidentiality in respect of confidential security documentation which the data processor makes available to the controller.

**9. Security Breach Notification**

The data processor will notify the controller without undue delay, if personal data processed on behalf of the controller is exposed to a breach of security.

The data processor’s notification should, at minimum, include information that describes the security breach, which registered subject is affected by the breach, what personal data is affected by the breach, what immediate measures are implemented to address the breach and what preventive measures may have been established to avoid similar incidents in the future.

The data controller is responsible for ensuring that the Norwegian Data Protection Authority is notified when required according to the data protection legislation.

## 10. Sub-processors

The data processor is obliged to enter into separate agreements with sub-processors that govern the sub-processor’s processing of personal data in connection with this agreement.

In agreements between the data processor and sub- processors, the sub- processors will be required to comply with all the obligations to which the data processor is subject under this agreement and according to law. The data processor is obliged to submit the agreements to the data controller on demand.

The data processor will verify that sub-processors comply with their contractual obligations, in particular that data security is satisfactory and that employees of the sub-processors are familiar with their obligations and fulfil them.

*Comment: Select option 1 or 2 under:*

*[Option 1: Using sub-processors]*

The data controller approves that the data processor contracts the following sub-processors to satisfy this agreement:

…………………………………………………………………………………………………... (names of sub-processors)

The data processor may not contract any other sub-processors than those listed above without prior written approval by the data controller.

The data processor is liable for damages to the data controller for any financial loss that is inflicted on the data controller cf. section 14, and that is due to illegal or improper processing of personal data or inadequate data security on the part of sub-processors.

*[Option 2: If sub-processors are not used]*

The Data Processor shall not use a subcontractor to fulfill this agreement.

If the need arises to engage subcontractors to fulfill this agreement, this must be approved in writing by the Data Controller in advance.

The Data Processor is liable for damages according to point 14 towards the Data Controller for financial losses imposed on the Data Controller that are due to illegal or improper processing of personal data or insufficient information security at subcontractors, which are engaged and approved after the agreement is entered into.

**11. Transfer to countries outside the EU/EEA**

*Comment: Personal data that the data processor is processing on behalf of the data controller may be transferred to countries outside the EU/EEA (third countries). Such transfer may take place on certain conditions, and the rules for transfer to third countries are found in Articles 45-47 and 49 of the EU data protection regulation. These rules imply, among other things, that the transfer will be lawful if it takes place to EU-approved third countries or on the basis of the EU Commission's standard contractual clauses for transfer of personal data to data processors in third countries. The rules also apply to backup and other transfer of personal data that is carried out in connection with the administration of the service in question, such as support.*

Personal data that the data processor processes in accordance with this agreement will be transferred to or accessed from the following recipient countries outside the EU/EEA:

................................................................................................................... (name of recipient country)

The legal basis for transmitting personal data to the aforementioned recipient countries outside the EU/EEA is:

…………………………………………………………………………………………………... (brief explanation of the transfer basis)

## 12. Safety audits and impact assessments

The data processor will regularly implement security audits of its own work with safeguarding of personal data from unauthorised or unlawful access, alteration, erasure, damage, loss, or unavailability.

Security audits will include the data processor’s security goals and security strategy, security organisation, guidelines and routines for security work, established technical, physical and organisational safeguards and the work of data security at sub-processors to this agreement. It will also include routines for warning the data controller in the event of security breaches, and routines for testing of emergency and continuity plans.

The data processor will document the security audits. The data controller will be granted access to the audit reports on request.

If an independent third party conducts security audits at the data processor, the data controller will be informed of which auditor is being used and be given access to the summaries of the audit reports on request.

Any additions: The parties may agree that the data controller itself, or an independent third party that the data controller chooses, performs security audits at the data processor, or how any costs incurred in connection with such an audit should be allocated.

## 13. Return and erasure

Upon termination of this agreement, the data processor is obliged to return and erase any personal data that is processed on behalf of the data controller under this agreement. The data processor determines how the return of the personal data will take place, including the format to be used.

Erasure is to be carried out by the data processor within (fill in number) days after the termination of the agreement. Erasure shall be carried out by the data processor utilising a delitieon tool/method to be apporoved in advance by the controller”. This also applies to the backup of personal data.

The data processor will document that the erasure of personal data has been carried out in accordance with this agreement. The documentation will be made available to the data controller on request.

The data processor covers all costs associated with the return and erasure of the personal data covered by this agreement.

**14. Breach of contract**

In case of significantly breach of the terms of this agreement caused by errors or omissions on the part of the data processor, the data controller may cancel the agreement with immediate effect. The data processor will continue to be obliged to return and erase personal data processed on behalf of the data controller pursuant to the provisions of Section 13 above.

The data controller may require compensation for direct financial loss suffered by the data controller as a consequence of errors or omissions on the part of the data processor, including breach of the terms of this agreement, cf. also sections 5 and 10 above.

## 15. Duration of the Agreement

This agreement applies as long as the data processor processes personal data on behalf of the data controller.

## 16. Contacts

Contact person at the data processor for any questions related to this agreement is:

*[Unit, position, contact information, address, phone and email]*

Contact person at the data controller for any questions related to this agreement is:

*[Unit, position, contact information, address, phone and email]*

*[Delete the alternative below – 17a or 17b – that is not applicable]*

**17a. Choice of Law and Legal Venue**

The agreement is governed by Norwegian law and the parties accept Oslo District Court as legal venue. This also applies after termination of the agreement.

*Comment: This section applies when the data processor is a private entity, or any entity other than other state universities or state university colleges.*

**17b. Choice of Law and Resolution of Disputes**

The Parties' rights and obligations under this agreement are determined in full by Norwegian law. Any disputes arising out of this Agreement shall be first sought to be resolved through negotiations.

If the parties do not reach agreement through negotiations, the dispute will be resolved with binding effect by the Ministry of Education and Research. Either party may require that the dispute be sent to the Ministry.

*Comment: This section applies when the data processor is another state university or state university college.*

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This agreement is in 2 – two copies, one to each of the parties.

Place and date

 On behalf of the data controller On behalf of the data processor

……………………….. ………………………

(signature) (signature)