**GUIDANCE ON PROCESSING OF PERSONAL DATA FOR ACCESS CONTROL SYSTEMS**

The legislation on personal data sets some legal requirements that need to be reflected in the agreement between the tenant and the lessor, if the lessor uses electronic access control to the property which involves processing information that may be linked to individuals. Among other things, the purpose of the processing must be stated, and certain information must be given to the individuals to whom the information is processed. Any use of data that may be linked to an individual, e.g. registration, assembly, storage or extradition, is “processing” of personal data.

With regard to data that the lessor processes for its own purposes, the lessor is the *data controller*. With regard to data that the lessor only processes on behalf of the tenant, the lessor the *data processor.*

This may be illustrated by the following example: When the lessor registers personal data in order to control that no unauthorized persons have access to the property (own purpose), the lessor is considered a data controller. According to the law, lessor will in this case be directly responsible for the processing of the personal data. On the other hand, when the lessor registers necessary data about key cards in order to give the individual tenant proper access to the premises, the lessor is considered a data processor. The decisive factor for this distinction is which of the parties determines the purpose of the processing and in what way the processing shall be performed.

The lessor and the tenant need to enter into a *data processing agreement* in accordance with the requirements in the legislation on personal data, since the lessor will be a data processor for some of the processing related to access control. These requirements are secured in the agreement draft below. In the event that the lessor assigns all or parts of the data processing for which the lessor is responsible, to an external supplier (e.g. a security firm), the lessor needs to enter into a data processing agreement with the security firm as well, forwarding its rights and obligations according to the (main) data processing agreement with the tenant “back to back” to its sub-supplier. Norsk Eiendom has drafted a standard data processing agreement draft for use between the lessor and external suppliers. The agreement is available for the members of Norsk Eiendom and can be downloaded from Norsk Eiendom’s website.

There may also be situations where the roles, based on the considerations of objectives as mentioned above, are reverse of what is described above, i.e. the tenant is the data processor on the lessor’s behalf. In this case, the parties also need to enter into a data processor agreement. As this is considered a more special scenario, the data processor agreement draft attached below is not adjusted to this scenario. However, the draft may with certain adjustments also be used in such cases.

The data processing agreement draft is updated to meet the new requirements in the General Data Protection Regulation (GDPR).

You can find more information about the rules for processing of personal data on the Norwegian Data Protection Authority’s website, www.*datatilsynet.no.*

**APPENDIX […] TO STANDARD LEASE AGREEMENT FOR BUSINESS PREMISES/BUILDINGS**

**DATA PROCESSING AGREEMENT**

**FOR THE PURPOSE OF USE OF ELECTRONIC KEY CARDS**

1. **Background**

[…] **(Lessor**) and […] **(Tenant)** have [date] entered into an agreement (**the Agreement**) which comprises leasing premises [Address, national grid number and property number] (**The Property**). The Lessor uses electronic key cards for the property [and for Exclusive Areas].

This data processing agreement governs the Lessor’s and he Tenant’s respective rights and obligations with respect to Lessor’s processing of personal data related to the key cards. The Tenant is the data controller and the Lessor is the data processor in this regard. The purpose of the Lessor’s processing of personal data on behalf of the Tenant is to ensure no unauthorized access to the Property and to conduct operational follow up/error correction.

The Lessor may register the following data about the Tenant’s personnel: Name, number on key card, date and time when the key card is used, the doors to which the key card has been used, including the number of attempts to use the key card on doors it has no access to. [It needs to be controlled for each agreement whether these categories are accurate. It is a legal requirement that the correct types of data are specified in the agreement.]

1. **The Tenant’s obligations**

The Tenant confirms that it:

* has a sufficient legal basis for processing of the personal data, including the right to allow the Lessor to process the personal data as specified in this data processing agreement;
* has the responsibility for the correctness and the completeness of the personal data so the Lessor may fulfil its duties;
* has informed the person to whom the personal information applies in accordance with applicable law; including that the Tenant shall ensure that all owners of the Lessor’s key cards are informed of such processing of their personal data as described in this data protection agreement. A copy of the information provided shall be given to the Lessor upon request.

The Tenant shall:

* Respond to inquiries from the data subjects regarding the processing of personal data under this data processing agreement
* Assess the necessity of measures as specified in section 3.3.2 and, if necessary, order such measures from the Lessor.

The Tenant shall implement sufficient technical and organizational measures to ensure and demonstrate compliance with applicable data protection legislation.

1. **The Lessor’s obligations**
	1. **Compliance**

The Lessor shall comply with all provisions on protection of personal data as set out in this data processing agreement and in applicable legislation on personal data.

* 1. **Instructions from the Tenant**

The Lessor shall only process personal data in accordance with documented instructions from the Tenant or as set out in this data processing agreement. The Lessor shall not without prior written agreement or instruction, process personal information beyond the scope of the obligation to comply with the regulations set out in this data processing agreement.

However, if the Lessor is required to do so by statutory law, the Lessor shall inform the Tenant of that legal requirement before processing, unless the relevant statutory law prohibits such information.

The Lessor shall immediately notify the Tenant if the Lessor is of the opinion that an instruction from the Tenant is in violation of any applicable data protection regulation.

* 1. **Information security**
		1. Assessment of measures

The Lessor shall implement planned, systematic and appropriate technical and organisational measures to ensure an appropriate level of security in the data systems and processes (information security).

The Lessor shall secure that the data are not made available for unauthorized persons (confidentiality), that it cannot be changed unintended or by unauthorized persons (integrity), and that the information is accessible to the rightful users when they need the data to perform their duties (accessibility).

In assessing the technical and organisational measures to be taken, the Lessor shall in consultation with the Tenant take into account:

* Best practice
* The cost of implementation
* The nature and extent of the processing
* The context and purpose of the processing
* The risk for the rights of the individuals, which the processing of the personal data may lead to.

The Lessor shall, in consultation with the Tenant, take into account:

* Implementing of pseudonymization (replacement of directly identifying data with codes) and encryption of personal data.
* The ability to ensure ongoing confidentiality, integrity, accessibility as mentioned above, and the resilience of systems for processing and services
* The ability to restore accessibility and access to personal data in case of unauthorized physical or technical events
* A process for regular testing, assessment and evaluation of the effectiveness of technical and organizational measures for the safety of the processing.

Relevant security documentation shall be made available for the Tenant upon request.

* + 1. Assistance to the Tenant

The Lessor shall provide assistance to the Tenant in such a way that the Tenant may ensure its own responsibilities in accordance with applicable law. The Lessor shall assist the Tenant with:

* Obligations to implement appropriate technical and organisational measures as mentioned above
* Compliance with the duty to notify the Data Protection Authority and the registered persons regarding any deviations, when the legislation so requires
* Obligations to conduct data protection impact assessments, when the legislation so requires
* Obligations to conduct prior consultations with applicable Data Protection Authorities, as applicable

Assistance shall be carried out to the extent necessary, taking into account the Tenant’s needs, the nature of the processing and the information available to the Lessor.

* + 1. Requests from the data subjects

The Lessor shall implement appropriate technical and organisational measures in order to support the Tenant to respond to inquiries from the data subjects regarding the exercise of their rights in accordance with the law.

* + 1. Compensation

The Lessor may claim compensation for its assistance as mentioned in this data processing agreement, as well as assistance related to separate routines or instructions required by the Tenant. Such compensation shall be given based on accrued time in accordance with the Lessor’s standard terms and hourly rate, or in the absence of this; as agreed between the parties.

## Personal data breach and notification of breach

Any processing of personal data in violation of established routines, instructions from the Tenant or applicable data protection legislation, as well as any security breaches, shall be construed as a personal data breach.

The Lessor shall have in place technical and organisational measures to follow up personal data breaches, which shall include re-establishing of the normal state of affairs, eliminating the cause of the breach and preventing its recurrence.

The Lessor shall immediately notify the Tenant of any breach of this data processing agreement. The Lessor shall provide the Tenant with all information necessary to enable the Tenant to comply with applicable data protection legislation and enabling the Tenant to answer any inquiries from the applicable data protection authorities. The Tenant is the party responsible for notifying the applicable data protection authority of personal data breaches in accordance with applicable law.

* 1. **Confidentiality**

The Lessor shall keep confidential all personal data and other confidential information provided to it under the Agreement or this data processing agreement, included, but not limited to, business secrets. The Lessor shall ensure that each member of its staff, whether employed or hired employee, having access to or being involved with the processing of personal data under the Agreement, (i) undertakes a duty of confidentiality, and (ii) is informed of and complies with the obligations of this data processing agreement. The duty of confidentiality shall also apply after termination of the Agreement or this data processing agreement.

* 1. **Security audits**

The Lessor shall regularly conduct security audits on its systems and routines which are relevant to the processing of personal data covered by this data processing agreement. The results of the audit shall be documented and made available to the Tenant upon request.

The Tenant is entitled to demand security audits performed by an independent third party. The third party auditor will provide a report from the security audit to the Tenant upon request. The Lessor shall be entitled to claim compensation for assisting in such audit in accordance with the Lessor’s standard terms and hourly rate based on the Lessor’s accrued time, or in the absence of this; as agreed between the parties.

* 1. **Use of subcontractors; transfer of personal data outside the EU/EEA**

Any engagement of subcontractors for the processing of personal data requires prior written acceptance by the Tenant. A list of approved subcontractors may be attached to this data processing agreement. The Lessor shall in a written agreement with any subcontractor, ensure that processing of personal data is subject to the same limitations and obligations as those imposed on the Lessor under this data processing agreement.

If the Lessor plans to change an existing or add a new subcontractor, it shall notify the Tenant in writing within reasonable time for the Tenant’s approval, prior to any processing by the new subcontractor. The Tenant shall upon receipt of such notice, approve the subcontractor within a reasonable time, unless the Tenant has a reasonable reason to oppose the change.

The Lessor may not use any subcontractor involving transfer of personal data outside the EU/EEA without special agreement with the Tenant. If the Tenant accepts such transfer, the Lessor shall cooperate with the Tenant to ensure a legal transfer.

1. **Breach of agreement**

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

1. **Term, termination of the data processing agreement, changes**

This data processing agreement shall be effective from the date it is signed by both Parties and until the Agreement expires, or until the Lessor’s obligations in relation to the processing in accordance with the Agreement is otherwise terminated.

Upon termination of this data processing agreement, the personal data shall be returned in a standardised format on an electronic medium. The Lessor shall first return, and subsequently delete, all stored personal data. The Lessor and its subcontractors shall immediately stop the processing of personal data upon the termination of the data processing agreement.

As an alternative to returning the personal data, the Tenant may at its sole discretion instruct the Lessor to merely delete all personal data, unless the Lessor is prevented by statutory law from such deletion.

The Lessor shall provide the Tenant with a written declaration whereby the Lessor warrants that all personal data has been returned or deleted according to the Tenant’s instructions.

The obligations pursuant to sections 3.5 and 4 shall continue to apply after termination. Further, the provisions of the data processing agreement shall apply in full to any personal data retained by the Supplier in violation of section 5.

The parties shall revise this data processing agreement to the extent it is necessary to comply with any future changes in relevant legislation or orders from public authorities.

1. **Disputes and jurisdiction**

This data processing agreement shall be governed by and construed in accordance with the laws of Norway. The legal venue shall be the same as in the Agreement.

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*[place], [date]*

For the Lessor for the Tenant

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