

**Date**: 1st September 2020

**(1) WALSALL METROPOLITAN BOROUGH COUNCIL**

**- and -**

**(2)**

**DATA SHARING**

**AGREEMENT**

**THIS AGREEMENT** is made on 1st September 2020

**BETWEEN:**

**(1) WALSALL METROPOLITAN BOROUGH COUNCIL** of Civic Centre, Darwall Street, Walsall, WS1 1TP (‘the Council’) [ICO Registration Number: Z5761790]

**- and -**

**(2)** (Company Registration no …….................)(if applicable)] [whose registered office is at .................... ] (the ‘Landlord’) (ICO Registration Number: [*insert ICO registration number here*])

# SCOPE

* 1. **Aim of Agreement**
		1. This Agreement introduces binding provisions to ensure the protection and security of all Data that is passed between the Parties.
	2. **Legislative Framework**

The following is a non-exhaustive list of legislation and guidance that may apply to the Processing of Data pursuant to the Contract:

**1.2.1** The General Data Protection Regulation (Regulation (EU) 2016/679) (the ‘GDPR’);

**1.2.2** The Data Protection Act 2018 and any subsequent Data Protection Legislation (the ‘DPA’);

**1.2.3** The EU Data Protection Directive 95/46;

**1.2.4** The Regulation of Investigatory Powers Act 2000;

**1.2.5** The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000;

**1.2.6** The Electronic Communications Data Protection Directive 2002/58/EC;

**1.2.7** The Privacy and Electronic Communications (EC Directive) Regulations 2003;

**1.2.8** All applicable laws, and regulations relating to the Processing and Sharing of Data and privacy including (where applicable and without limitation) the guidance and codes of practice issued by the Information Commissioner under the GDPR, DPA and under any subsequent Data Protection Legislation.

* 1. **The Data Protection Act and General Data Protection Regulations**
		1. The GDPR places certain obligations on a Data Controller to ensure that any Processing and/or Sharing activities in which it engages provides sufficient guarantees to ensure that the Sharing of Data is done securely and this Agreement is to ensure that there are such sufficient security guarantees in place and that such Sharing complies with the principles specified in the GDPR, in particular Articles 5(f), Article 6 and Article 9.

**1.3.2** The Landlord will comply with any requirements or instructions from the Council in respect of the Council’s obligations pursuant to the Data Protection Legislation, including - but not limited to - any additional requirements of the Parties under the GDPR, at the Landlord’s expense, including satisfying the Council with sufficient guarantees that the Landlord has implemented appropriate technical and organisational measures to meet the GDPR’s requirements and protect Data Subjects’ rights.

**1.4 The Roles of the Parties**

**1.4.1** The Parties agree that this Agreement is to provide additional assurances with regards to the appropriate handling, sharing of Data on by the Council.

**1.4.2** For the purposes of this Agreement, the Parties shall be acting as:

Controller – Joint Controller: Data is passed or shared between the Council and Landlord in order to deliver the services, but where the Council does not provide instructions with regards to the processing of data undertaken by the Landlord, acting as the other Joint Controller, therefore the Data is shared for the purposes of delivering such services.

# DEFINITIONS AND INTERPRETATION

* 1. The words/phrases in this Agreement which are set out in the left hand column of the following Definitions Table shall (unless the context otherwise requires) have the meanings which are given to them opposite in the right hand column of the Definitions Table:

|  |
| --- |
| **DEFINITIONS TABLE** |
| **WORD/PHRASE** | **DEFINITION** |
| **Agreement** | This data sharing agreement and all of its schedules and any variations to it in accordance with clause 17.3 |
| **Business Days** | Any day that is not a Saturday, Sunday or public holiday in England |
| **Council** | Walsall Metropolitan Borough Council |
| **Data** | Any information relating to a living person who can be directly or indirectly identified in particular by reference to a unique identifier to include Personal Data and also data which comprises of any written information which is provided to or acquired by a Data Processor pursuant to the Contract and which is defined in Schedule B of this Agreement as either: (a) commercially sensitive; or (b) confidential; or (c)special categories of Personal Data  |
| **Data Controller** | Council and Landlord |
| **Data Protection****Legislation** | The statutes, regulations, codes and guidance which are referred to in clause 1.2 of this Agreement |
| **Data Subject** | Means the identified or identifiable living individual to whom the Data relates |
| **DPA** | The Data Protection Act 2018 and any subsequent Data Protection Legislation |
| **GDPR** | The General Data Protection Regulation (Regulation (EU) 2016/679) |
| **ICO** | The Information Commissioner’s Office |
| **Information Asset Owner** | A designated senior officer with ownership and responsibility for specific information assets (including paper based and electronic records and IT systems) |
| **Joint Controller** | A Data Controller in its own right, as described in the GDPR Article 26 and where the Council does not provide instructions about the processing activities, but shares Data in order to extract or receive results or outcomes of the processing under the provision of the goods, services or works being delivered pursuant to the Contract |
| **Parties** | The Council and Landlord |
| **Party** | The Council or Landlord (as applicable) |
| **Personal Data** | As defined in Article 4 (1) of the GDPR |
| **Personnel** | All employees of the Landlord, or its suppliers, contractors, sub-contractors, officers, agents, students on work experience and volunteers who are from time to time employed and/or engaged in connection with Processing Data on behalf of the Council or otherwise in relation to the performance of this Agreement and the Contract |
| **Processing / Processed / Process** | Any operation, or set of operations, which is/are performed upon any Data (whether or not wholly or partially by automatic means) including collection, recording, organisation, storage, scanning, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction and which forms part of (or is intended to form part of) a structured filing system, (including the removal/relocation of such Data). For processing of Personal Data the definition of processing within this Agreement shall have the same meaning as Processing within Article (4) (2) of the GDPR |
| **Landlord** |  |
| **Sharing** | The transfer of Data between the Council and the Landlord or a third partyfor the purpose of delivering, receiving or implementation of goods, services or works pursuant to the Contract |
| **Term** | The term will commence immediately and continue until 31.5.2021. |

**2.2 Interpretation**

**2.2.1** Any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to:

(a) such legislation as amended and in force from time to time and to any legislation that (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation; and

(b) any subordinate legislation made under the same before (but not after) the date of this Agreement;

**2.2.2** Any reference to a date that is not a Business Day shall be treated as a reference to the next Business Day;

**2.2.3** Any references to ‘include’ and ‘including’ are to be construed as being without limitation;

**2.2.4** References to words in the masculine gender shall include the feminine and vice versa, and those in the singular shall include the plural and vice versa;

**2.2.5** References to the ‘Data Controller’ and the ‘Data Processor’ shall include their respective successors in title and any reference to any government department or other relevant authority or body is deemed to include its or their successors.

# APPLICATION

This Agreement shall apply to all Data which is shared for the purposes of definitions laid down in schedule 9 of the Housing Benefit Regulations 2006 (Matters to be included in a decision notice).

# PURPOSE OF SHARING

* 1. **Extent of Sharing**
		1. The Landlord shall Process and accept securely the Data that it receives from the Data Controller pursuant to this Agreement, solely for the purpose of fulfilling its obligations.

**4.1.2** The Landlord shall also Process the Data as required by law or any regulatory body and by providing appropriate levels of assurance, which includes (but is not limited to):

**(a)** using appropriate policies on data protection, information security and retention of Data, which the Landlord shall make available to the Council upon request;

* + - 1. operate under any required instructions received by it from the Council which may be either specific instructions, or instructions of a general nature to ensure appropriate safeguards and security is applied;
			2. the various requirements set out in this Agreement, or as may otherwise be agreed by the Parties (acting reasonably) from time to time during the Term.
		1. The Landlord shall not Process the Data for any other purpose without obtaining the express prior written consent of Walsall Council.

# SECURITY AND CONFIDENTIALITY OF DATA

* 1. **Security Measures**

**5.1.1** The Landlord shall implement appropriate technical and organisational measures to protect the Data from any unauthorised or unlawful Processing or accidental loss, destruction or damage.

**5.1.2** The Landlord acknowledges that it has implemented technical and organisational measures, as required under the Sixth Principle of the GDPR in order to prevent unauthorised or unlawful Processing, or accidental loss or destruction of the Data

**5.1.3** Where the Agreement requires the Processing of Personal Data, the Landlord acknowledges that it has implemented appropriate technical and organisational measures to meet the processing GDPR requirements to ensure the rights of the Data Subject. The Landlord acknowledges that it will comply with all Data Protection Legislation to include - but not limited to the GDPR Articles 5, 6 and 9 - which relate to the Processing of Data as defined by the data categories provided within Schedule B of this Agreement.

**5.1.4** The Landlord must ensure that its technical and organisation measures to prevent unauthorised and/or unlawful Processing, and/or accidental loss, and/or destruction of the Data, are:

**(a)** appropriate to the services being provided under the Agreement; and

**(b)** fully and diligently complied with by its Personnel at all times during the Term; and

**(c)** compliant with and meets the requirements and obligations of the GDPR.

* 1. **Security**
		1. The Landlord shall ensure that:

**(a)** its Personnel are made fully aware of its duties and obligations with regard to the security and protection of the Data;

**(b)** its Personnel have undergone training about awareness of data protection, their duty of confidentiality under the Agreement and in the care and handling of Personal Data; and

**(c)** it has appropriate policies and controls in place to safeguard the data categories that are the subject matter of this Agreement and/or otherwise processed and/or shared pursuant to the Agreement.

**(d)** Upon termination of employment, personnel logins will be deleted to ensure access is not granted to unauthorized personnel.

**5.2.2** The Landlord shall ensure that electronic copies of the Data are only ever held on encrypted devices or servers and are not e-mailed to third parties, and if transferred onto portable devices (which must be encrypted) then disposed of securely and permanently in accordance with this Agreement, in particular in accordance the with disposal requirements set out in clause 7 of this Agreement,.

**5.2.3** The Landlord shall not keep Personal Data on any laptop or other removable drive or device unless that device is protected by being fully encrypted, and the use of the device or laptop is necessary for the provision of the services under the Contract. Where this is necessary and the Council has given its consent in writing, the Landlord shall keep an audit trail of which laptops/drives/devices or any other forms of media upon which any Personal Data is held.

**5.2.4** The Landlord shall ensure that all paper copies held by it of any Data are held securely and (subject to clause 5.3) transferred either by safe haven fax or couriered in sealed containers and shredded upon disposal.

**5.2.5** The Landlord shall ensure that its Personnel enter into binding obligations with the Landlord, in order to maintain the levels of security and protection for the Data that is provided for in this Agreement.

* 1. **Data Dissemination**
		1. The Landlord shall not divulge or transfer the Data whether directly or indirectly to any third party without the express consent in writing of the Council, except to those of its Personnel who are legitimately engaged in the Processing of the Data for the purposes of the Contract (subject to clauses 5.3.2 and 5.3.3) and are subject to the binding obligations which are referred to in clause 5.2.
		2. The Landlord shall not use any agents or sub-contractors or any other third party to Process the Data without first obtaining the Council’s express permission in writing.
		3. Subject to clause 5.3.2, the Landlord shall ensure by a binding written contract that any agent or sub-contractor engaged by it Landlord to Process the Data (subject to clause 5.3.3) also provides the Landlord with a plan of the technical and organisational means it will adopt to prevent unauthorised and/or unlawful Processing, and/or accidental loss and/or destruction of the Data, and confirms to the Landlord in writing that it will diligently implement those means and comply unconditionally with the requirements of this Agreement at all times.
		4. The Landlord shall ensure that Personal Data is only provided to Personnel where there is a need to have that level of detail and it is within the scope of the consent about the use of such Personal Data that has been given by the Data Subject in question.

# LIMITATION OF LIABILITY

* 1. The Landlord’s liability to the Council for any loss or damage of any nature whatsoever suffered or incurred by the Data Controller or for any liability of the Data Controller, to any other person for any loss or damage of any nature whatsoever suffered or incurred by that person, pursuant to this Agreement, shall be no less than any fine imposed on the Council to the Data Protection Legislation.

**6.2** The Landlord shall also indemnify the Council against any costs, expense, including legal expenses, damages, direct and indirect loss, liabilities, demands, claims, actions or proceedings that the Data Controller may incur because of any breach of this Agreement by the Landlord.

6.3 The Landlord shall procure and maintain on a continuing claim basis insurance policies, in respect of the circumstances set out in clause 6.2 above, for any single claim throughout the Term and for at least 6 years following the expiry of this Agreement**,** such policies of insurance to be with a reputable insurer authorised to transact such business in the EU and who is registered with the Financial Conduct Authority

6.4 The Council may at any time request from the Landlord copies of the Landlord’s required insurance policies and the Landlord shall comply with any such request within 5 Business Days of receiving such Notice.

6.5 Any failure by the Landlord to put appropriate insurance policies in place in accordance with this section shall be construed as a material breach of this Agreement.

# TERMINATION

* 1. Subject to clause 7.6, this Agreement may be terminated by either Party on giving the required notice in accordance with the termination provisions within the Contract.
	2. Notwithstanding that this Agreement shall also terminate automatically upon the expiry of earlier termination of the Contract, the Parties shall continue to observe and comply with the requirements set out in section 8 below with regard to return of information and surviving obligations after such termination.
	3. Upon receipt of written notice from the Council, the Landlord shall return any Data that it has received from the Council to the Council forthwith.
	4. Upon the termination of this Agreement, the Landlord shall either return the Data to the Council or (subject to clause 7.5) securely destroy any Data that it has received from either the Council or from any other source in its role as Landlord in relation to either this Agreement or the Contract. In complying with this clause, the Landlord shall destroy: (i) electronic copies of the Personal Data securely by either the physical destruction of the storage media or secure deletion using appropriate electronic shredding software that meets HM Government standards; and (ii) any hard copy Data by cross-cut shredding and secure re-cycling of the resulting paper waste.
	5. The Landlord shall obtain written authorisation (from the relevant Information Asset Owner and/or data protection manager) for the secure destruction of the Data from the Council prior to proceeding with any destruction of the Data under clause 7.4.
	6. Notwithstanding the termination of this Agreement, the provisions of clauses 5 (Security and Confidentiality of Data) and 7 (Termination) shall survive and shall continue in full force and effect until the Landlord complies fully with clause 7.4.
1. **RETURN OF INFORMATION AND SURVIVING OBLIGATIONS**
	1. Upon the termination or expiration of either this Agreement or the Contract (whichever is the earlier) the Landlord will, at the Council’s request (and unless required by law to retain):
		1. promptly return any and all materials containing Personal Data to the Council; or
		2. delete such materials from its computer systems (including, but not limited to: personal computers; laptops; other computers; electronic handheld devices; memory sticks; USB sticks; servers; hard drives; CD ROMs, and other forms of media storage inclusive of cloud storage) and destroy any hard copies; or
		3. ensure that any Data that is to be returned to the Council is made available in a readable and legible format to ensure compliance of any future subject access and/or systems requirements, and/or otherwise aid the Council in meeting its obligations under data repatriation, migration and or matching requirements.

**8.2** If the Council does not provide such instructions to the Landlord pursuant to clause 8.1, then the Prorvider shall delete and/or destroy all materials containing Personal Data in accordance with Data Protection Legislation within a reasonable time.

# ASSIGNMENT

* 1. This Agreement shall not be transferred or assigned to any third party by either Party, except with the prior written consent of the other Party.
1. **NOTIFICATION OF COMPLAINTS, CLAIMS, REQUESTS AND BREACHES**
	1. The Landlord shall immediately notify the Data Controller if it
		1. receives a request from an Data Subject to have access to their Personal Data; or
		2. receives either a complaint or request relating to the Data Controller's obligations under the Data Protection Legislation, or any claim that the Data Controller has committed any breach of any of its obligations under either the Data Protection Legislation or this Agreement;
		3. becomes aware that it has committed any breach of the requirements of either this Agreement and/or of the Data Protection Legislation in relation to this Agreement.
	2. If any of the contingencies specified in clause 10.1 occurs, then the Landlord shall:
		1. provide the Council with its full cooperation and assistance, in relation to the complaint or request that has been made, including by:
2. providing the Council with full details of the complaint or request in question; and
3. complying with any Data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council’s instructions; and
4. providing the Council with any Personal Data it holds in relation to an Data Subject (within the timescales required by the Council ; and
5. providing the Council with any reasonable request for information;
	* 1. permit the Council or its officers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Landlord's Data Processing activities (and/or those of its agents, subsidiaries and sub-contractors);
		2. comply with all reasonable requests or directions by the Council to enable the Council to verify that the Landlord is complying fully with its obligations under both this Agreement and the Data Protection Legislation;
		3. provide a written description of the technical and organisational methods that are employed by the Landlord for Processing Data (within the timescales required by the Council);
		4. notify the Council without undue delay after becoming aware of a Personal Data breach;
		5. provide the Council with its full cooperation and assistance, in relation to a Personal Data breach and shall use best endeavors to provide any information required by the Council relating to the Personal Data breach within a reasonable timeframe but no later than 48 hours of being made aware of the breach;
		6. acknowledge that a Data Controller must report any Personal Data breach to the relevant supervisory authority (in accordance with Article 33 of the GDPR) without undue delay and, where feasible, not later than 72 hours after having become aware of it. The Landlord must therefore immediately report any serious Personal Data breaches to the Council and shall use its best endeavors to assist the Council in complying with the Articles 33 and 34 of the GPPR.

# DATA PROCESSING

* 1. The Landlord shall not Process Data outside the European Economic Area, as referred to in the Data Protection Legislation without the Council’s prior written consent and if the Council consents to a transfer, the Landlord shall then comply with:
		1. the obligations specified under Chapter V of the GDPR and providing appropriate safeguards on the condition that enforceable data subject rights and effective legal remedies for Data Subjects are available in accordance with Article 46 of the GDPR and;
		2. any reasonable instructions that are notified to it by the Council.
	2. The Landlord shall allow the Council to monitor the Landlord’s compliance, with its obligations in this Agreement in relation to the Data from time to time during the Term and in such manner and to such extent as the Council deems appropriate (acting reasonably).
	3. The Landlord shall comply at all times with the Data Protection Legislation and shall not perform its obligations pursuant to this Agreement in such a way as to cause the Council to suffer any loss or damage.

**11.4** The Council shall be entitled to request from the Landlord at any time copies of documentation to satisfy itself about the Landlord’s compliance with the Data Protection Legislation and the Landlord shall comply with any such request within 5 Business Days of receiving such Notice.

# JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and Wales and the Parties shall submit to the exclusive jurisdiction of the Courts of England and Wales.

# DISPUTES

* 1. The Parties shall make every reasonable effort (acting in good faith at all times) to resolve by agreement any dispute which arises between them about any issue relating to this Agreement.
	2. If the Parties are unable to reach a mutually satisfactory resolution of their dispute within 10 Business Days of a dispute being notified in writing by one Party to the other, then the Parties shall comply with the following procedures:
		1. The issue shall be discussed at a meeting, at which the Parties’ authorised representatives will attend, to be held within 10 further Business Days;
		2. If the dispute is not resolved within a further 10 Business Days after the above meeting, the issue shall be referred to senior managers for both Parties;
		3. If the Parties’ senior managers fail to resolve the dispute within 10 Business Days of its referral to them, either Party may refer the dispute in accordance with the Centre for Effective Dispute Resolution (‘CEDR’) Model Mediation Procedure;
		4. If the Parties do not agree on the identity of the mediator then either Party may ask CEDR to appoint a mediator;
		5. The Parties must pay the mediator’s fees in equal shares (unless otherwise agreed) and do whatever possible to ensure that the mediation starts as soon as possible.
	3. Any agreement reached as a result of mediation under this section shall be final and binding upon the Parties, but if the dispute has not been settled within 20 Business Days of the mediation starting then either Party may instigate court proceedings.
	4. Use of the above dispute resolution procedure shall neither delay nor take precedence over any use of this Agreement’s default or termination procedures.
1. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Agreement does not and is not intended to confer any benefit on any third party pursuant to the terms of the Contract (Rights of Third Parties) Act 1999.

# NOTICES

* 1. All notices under this Agreement must be sent by first class, or recorded delivery post, or be delivered by hand.
	2. Service of any notice by either of the Parties under this Agreement by email shall not be permitted.
	3. Any notice to the Parties shall be addressed to their respective authorised representatives at the addresses stated in the Agreement.

# MISCELLANEOUS PROVISIONS

* 1. No neglect, delay, or any other act or omission by either of the Parties in exercising any right or remedy, will be deemed a waiver of that, or any other, right or remedy.
	2. The Parties are independent entities and are not partners, employer and employee, or principal and agent, or in any other relationship to each other, other than that the Landlord is the Council’s contractor.
	3. Variations to this Agreement shall only have effect if they are in writing and signed on behalf of each of the Parties.
	4. Time shall not be of the essence unless otherwise stated.
	5. If any provision of this Agreement becomes or is found by any competent court or administrative body to be invalid or unenforceable, that part shall be deemed omitted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
	6. The Parties will do all further acts and execute all further documents as are necessary (if any) in order to give effect to this Agreement.

# SCHEDULE B

# DATA

This schedule outlines and defines the data categories that are to be processed and/or shared in performance of the Contract.

**B1. Commercial Sensitive Data**

The following information relating to the Contract shall be classed as ‘commercially sensitive’ and shall therefore constitute ‘Data’ for the purposes of this Agreement:

N/A

**B2. Confidential Data**

The following information relating to the Contract shall be classed as ‘confidential’ and shall therefore constitute ‘Data’ for the purposes of this Agreement:

N/A

**B3. Personal Data**

All information as specified in schedule 9 of the Housing Benefit Regulations 2006 (Matters to be included in a decision notice).

**B4. Special Categories of Personal Data**

N/A

**B5. Data required for the performance of the Contract**

N/A

**SIGNED by** each of the Parties by its duly authorised representative on the date shown at the beginning of the Agreement

**Signed** on behalf  )

of Walsall Metropolitan )

Borough Council ) ...........................................................................

 Authorised Signatory

**Signed** by or on behalf of

 .........................................................................

 Authorised Signatory

**Email address:…………………………………………………………………………………………**