

DATA PROCESSING AGREEMENT



THIS AGREEMENT is made the 1st day of June 2014

BETWEEN

1.0 The Parties

1.1 Leeds City Council, (herein after called the "Data Controller") of Civic Hall, Calverley Street, Leeds, LS1 1UR of the one part, and Leeds Empties (herein after called the "Data Processor") of **Micklethwaite House, 70 Cross Green Lane, LS9 0DG** of the other part.

2.0 Purpose

2.1 The purpose of the disclosure is based on the recent initiative to increase the number of empty properties being brought back into use across Leeds. Leeds Empties will be targeting, on behalf of Leeds City Council, properties that have been empty for more than 6 months in the following post codes – LS7, LS15-LS29,BD3-4,BD10-11,WF3 and WF10.

The owners details will not be made publicly available, the data will only be shared by the Data Processor and who is commissioned by the Data Controller and which is outlined in Appendix 1 ("the Purpose").

2.2 This Agreement sets out the terms and conditions under which Data held by the Data Controller will be disclosed to the Data Processor. This Agreement is entered into with the purpose of ensuring compliance with the Data Protection Act 1998 ("the Act"). Any processing of data must comply with the provisions of this Act. The Data Controller reserves the right to check compliance with this agreement by the Data Processor.

2.3 The Purpose is consistent with the original purpose of the Data collection.

3.0 Definitions

3.1 The following words and phrases used in this Agreement shall have the following meanings except where the context otherwise requires:

3.2 The expressions "**Data**", "**Data Controller**", "**Data Processor**", "**Personal Data**", "**Sensitive Personal Data**", "**Processing**", "**Information Commissioner**", "**Data Subject Access**" have the same meaning as in Sections 1, 2, and 6 of The Data Protection Act 1998, as amended by The Freedom of Information Act 2000.

3.3 "**Aggregated Data**" means Data grouped together to the extent that no living individual can be identified from that Aggregated Data or any other Data in the possession of, or likely to come into the possession of any person obtaining the Aggregated Data.

- 3.4 The “**Designated Manager**” means **John Statham** on behalf of the Data Controller or other such person as shall be notified to the Data Processor from time to time.
- 3.5 The “**Project Manager**” means **Gill Coupland** on behalf of the Data Processor or such other person as shall be notified to the Data Controller from time to time.
- 3.6 “**Government Protective Marking Scheme**” means a scheme for the classification of information.
- 3.7 “**Agreement**” means this data processor agreement together with its Schedules and all other documents attached to or referred to as forming part of this agreement.
- 3.8 “**Confidential Information**” means any information relating to the Data Controller’s customers and prospective customers, current or projected financial or trading situations, business plans, business strategies, developments and all other information relating to the Data Controller’s business affairs including any trade secrets, know-how and any information of a confidential nature imparted by the Data Controller to the Data Processor during the term of this Agreement or coming into existence as a result of the Data Processor’s obligations, whether existing in hard copy form or otherwise, and whether disclosed orally or in writing. This definition shall include all Personal Data.
- 3.9 “**Services**” means the services to be provided by the Data Processor during the term of this Agreement.
- 3.10 “**Charges**” means the amounts due and payable by the Data Controller to the Data Processor for the provision for the provision of the Services.
- 3.11 Headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement and, unless otherwise stated, references to clauses and schedules are references to the clauses of and schedules to this Agreement;
- 3.12 Any reference to any enactment or statutory provision shall be deemed to include a reference to such enactment or statute as extended, re-enacted, consolidated, implemented or amended and to any subordinate legislation made under it; and
- 3.13 The word ‘including’ shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word ‘include’ and its derivatives shall be construed accordingly.

4.0 Information provision

- 4.1 It is recognised that the Purpose requires access to the Data, which has been previously protectively marked by the Data Controller under the Government Protective Marking Scheme.
- 4.2 Ownership of the Data shall at all times remain with the Data Controller.

5.0 Use, Disclosure and Publication

- 5.1 The Data will be used solely for the Purpose only.
- 5.2 Subject to Appendix 1 below, the Data will NOT be matched with any other Personal Data otherwise obtained from the Data Controller, or any other source, unless specifically authorised in writing by the Data Controller.
- 5.3 The Data will NOT be disclosed to any third party without the written authority of the Data Controller.
- 5.4 Access to the Data will be restricted to those employees of the Data Processor as listed in Appendix 1 and approved by the Data Controller, directly involved in the processing of the Data in pursuance of the Purpose.
- 5.5 No steps will be taken by the Data Processor to contact any Data Subject identified in the Data, unless specifically authorised by the Data Controller.

6.0 Data Protection and Human Rights

- 6.1 The use and disclosure of any Personal Data shall be in accordance with the obligations imposed upon the Parties to this Agreement by the Data Protection Act 1998 and the Human Rights Act 1998. All relevant codes of practice or data protection operating rules adopted by the Parties will also reflect the data protection practices of each of the parties to this Agreement.
- 6.2 The Parties agree and declare that the information accessed pursuant to this Agreement will be used and processed with regard to the rights and freedoms enshrined within the European Convention on Human Rights. Further, the Parties agree and declare that the provision of information is proportional, having regard to the purposes of the Agreement and the steps taken in respect of maintaining a high degree of security and confidentiality.
- 6.3 The Parties undertake to comply with the provisions of the Data Protection Act 1998 and to notify as required any particulars as may be required to the Information Commissioner.
- 6.4 The receipt by the Data Processor from any Data Subject of a request to access to the Data covered by this Agreement must be reported immediately to the person nominated below representing the Data Controller, who will arrange the relevant response to that request.

- 6.5 If any Party receives a request under the subject access provisions of the Data Protection Act 1998 and personal data is identified as belonging to another Party, the receiving Party will contact the other Party to determine if the latter wishes to claim an exemption under the provisions of the Act.
- 6.6 It is acknowledged that where a Data Controller cannot comply with a request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request, unless;
- 6.6.1 the other individual has consented to the disclosure of the information to the person making the request; or
- 6.6.2 it is reasonable in all the circumstances to comply with the request without the consent of the other individual. In determining whether it is reasonable, regard shall be had, in particular, to:-
- 6.6.2.1 any duty of confidentiality owed to the other individual;
- 6.6.2.2 any steps taken by the data controller with a view to seeking consent of the other individual;
- 6.6.2.3 whether the other individual is capable of giving consent;
- 6.6.2.4 any express refusal of consent by the other individual.
- 6.7 If any Party receives a request for information under the provisions of the Freedom of Information Act 2000 identified as belonging to another Party, the receiving Party will contact the other Party to determine whether the latter wishes to claim an exemption under the provisions of that Act.
- 6.8 Where the Data Processor receives a request for information under the provisions of the Freedom of Information Act 2000 in respect of information provided by or relating to the Data Controller, the Data Processor will contact the person nominated below to ascertain whether the Data Controller wishes to claim any exemption including the determination of whether or not the Data Controller wishes to issue a response neither to confirm nor deny that information is held.
- 6.9 Where any Party receives a Notice under Section 10 of the Data Protection Act 1998, that Party will contact the person nominated below to ascertain whether or not to comply with that Notice.
- 6.10 The following personnel are authorised by the Parties to assume responsibility for data protection compliance, notification, security, confidentiality, audit and co-ordination of subject rights and Freedom of Information:

<i>Nominated Post holder</i>	<i>Role</i>	<i>Organisation</i>
Mark Turnbull, Head of Property, Finance & Technology Legal Services	Data Controller	Leeds City Council
Gill Coupland	Data Processor	Leeds Empties
Jon Andrews	Information Compliance Officer for Environment and Housing	Leeds City Council
Mandy Dobson	Data Practitioner/Freedom of Information Officer for Environment and Housing	Leeds City Council

6.11 The Data Processor shall give reasonable assistance as is necessary to the Data Controller in order to enable him to:

- 6.11.1 Comply with request for subject access from the Data Subjects;
- 6.11.2 Respond to Information Notices served upon him by the Information Commissioner;
- 6.11.3 Respond to complaints from Data Subjects;
- 6.11.4 Investigate any breach or alleged breach of the Act;

in accordance with his statutory obligations under the Data Protection Act 1998.

6.12 On reasonable notice, periodic checks may be conducted by the Data Controller to confirm compliance with this Agreement.

7.0 Confidentiality

7.1 The Data Processor shall not use or divulge or communicate to any person (other than those whose province it is to know the same for the Purpose, or without the prior written authority of the Data Controller) any Data obtained from the Data Controller, which it shall treat as private and confidential and safeguard accordingly.

- 7.2 The Data Processor shall ensure that any individuals involved in the Purpose and to whom Data is disclosed under this Agreement are aware of their responsibilities in connection with the use of that Data.
- 7.3 For the avoidance of doubt, the obligations imposed on the Parties by this Agreement shall continue in full force and effect after the expiry or termination of this Agreement until the Data Processor no longer holds and retains Data relating to the Purpose.
- 7.4 Respect for the privacy of individuals will be afforded at all stages of the Purpose.
- 7.5 The above shall not apply where disclosure of the Data is ordered by a Court of competent jurisdiction, or subject to any exemption under the Data Protection Act 1998, where disclosure is required by a law enforcement agency or regulatory body or authority, or is required for the purposes of legal proceedings, in which case the Data Processor shall immediately notify the Data Controller in writing of any such requirement for disclosure of the Data in order to allow the Data Controller to make representations to the person or body making the requirement.
- 7.6 The restrictions above shall cease to apply to any Data which may come into the public domain otherwise than through unauthorised disclosure by the Parties to the Agreement.

8.0 Retention, Review and Deletion.

- 8.1 The Data Processor will retain the Data for a period not to exceed 1 year in line with the Data Controller's retention policy, or upon the termination or completion of the Purpose, whichever is the shorter. Data shall be securely deleted from all physical and electronic storage media. The Data Controller will be notified in writing that this has been undertaken.

9.0 Security

- 9.1 The Data Processor recognises that the Data Controller has obligations relating to the security of Data in his control under the Data Protection Act 1998. The Data Processor will continue to apply those relevant obligations as detailed below on behalf of the Data Controller during the term of this Agreement.
- 9.2 The Data Processor agrees to apply appropriate security measures, commensurate with the requirements of principle 7 of the Data Protection Act 1998 to the Data, which states that: "appropriate technical and organisation measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data". In particular, the Data Processor shall ensure that measures are in place to do everything reasonable to:

- 9.2.1 make accidental compromise or damage unlikely during storage, handling, use, processing transmission or transport;
 - 9.2.2 deter deliberate compromise or opportunist attack, and;
 - 9.2.3 promote discretion in order to avoid unauthorised access;
- 9.3 During the term of this Agreement, The Project Manager shall carry out any checks as are reasonably necessary to ensure that the above arrangements are not compromised.
- 9.4 The Data Controller may wish to undertake suitability checks on any persons having access to council premises and the Data and further reserves the right to issue instructions that particular individuals shall not be able to participate in the Purpose without reasons being given for this decision. The Data Processor will ensure that each person who will participate in the Purpose understands this and provides their written consent as necessary.
- 9.5 The Data Processor will ensure that the personal data accessed is not used other than as identified within this agreement, and that the agreement is complied with.
- 9.6 The Data Processor will carry out periodic security tests to ensure confidence in the physical and logical integrity of the Data and their systems and provide assurance to the Data Controller.
- 9.7 The Data Controller reserves the right to undertake a review of security provided by any Data Processor and may request reasonable access during normal working hours to the Data Processor premises for this purpose. Failure to provide sufficient guarantees in respect of adequate security measures will result in the termination of this Agreement.
- 9.8 Access to the Data will be confined to authorised persons only. These will be the individuals identified in Appendix 1.
- 9.9 The Data Processor undertakes not to use the services of any sub-contractors in connection with the processing of the Data without the prior written approval of the Data Controller.

10.0 Indemnity

- 10.1 In consideration of the provision of the Data for the Purpose the Data Processor undertakes to indemnify and keep indemnified the Data Controller against any liability, which may be incurred by the Data Controller as a result of the Data Processor's breach of this Agreement.
- 10.2 Provided that this indemnity shall not apply:
- 10.2.1 where the liability arises from information supplied by the Data Controller which is shown to have been incomplete or incorrect, unless the Data Controller establishes that the error did not result from any wilful wrongdoing or negligence on his part;

10.2.2 unless the Data Controller notifies the Data Processor as soon as possible of any action, claim or demand to which this indemnity applies, commits the Data Processor to deal with the action, claim or demand by settlement or otherwise and renders the Data Processor all reasonable assistance in so dealing;

10.2.3 to the extent that the Data Controller makes any admission which may be prejudicial to the defence of the action, claim or demand.

11.0 Disputes

11.1 In the event of any dispute or difference arising between the Parties out of this Agreement, the Designated Manager and the Project Manager shall meet in an effort to resolve the dispute or difference in good faith.

11.2 The Parties will, with the help of the Centre for Effective Dispute Resolution, seek to resolve disputes between them by alternative dispute resolution. If the Parties fail to agree within 56 days of the initiation of the alternative dispute resolution procedure, then the Parties shall be at liberty to commence litigation.

12.0 Term, Termination and Variation

12.1 The Data Controller may at any time by notice in writing terminate this Agreement forthwith if the Data Processor is in material breach of any obligation under this Agreement.

12.2 Either Party may terminate this Agreement by giving 30 days notice in writing to the other Party.

12.3 The Data Controller will have the final decision on any proposed variation to this Agreement. No variation of the Agreement shall be effective unless it is contained in a written instrument signed by both Parties and annexed to this Agreement.

13.0 Miscellaneous

13.1 This Agreement acts in fulfilment of part of the responsibilities of the Data Controller as required by paragraphs 11 and 12 of Schedule 1, Part II of the Data Protection Act 1998.

13.2 This Agreement constitutes the entire agreement between the Parties as regards the subject matter hereof and supersedes all prior oral or written agreements regarding such subject matter.

13.3 If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

13.4 The validity, construction and interpretation of the Agreement and any determination of the performance which it requires shall be governed by the Laws of England and the Parties hereby submit to the exclusive jurisdiction of the English Courts.

Signed on behalf of LEEDS CITY COUNCIL

.....
Name: **Responsibility:**

Signed on behalf of Leeds Empties

.....
Name: **Responsibility:**

Once complete a copy should be emailed to the CorporateInformationSecurity mailbox

APPENDIX 1

Leeds Empties are a Social Business enterprise who will be working in partnership with Leeds City Council. The purpose of the partnership is based on the recent initiative to increase the number of empty properties being brought back into use across Leeds.

Leeds Empties will be targeting, on behalf of Leeds City Council, properties that have been empty for more than 6 months in the following post codes – LS7, LS15-LS29,BD3-4,BD10-11,WF3 and WF10.

Leeds Empties will be working on behalf of Leeds City Council using information contained within the Land Registry, all of which is publicly available and information to be shared from the Councils, Council tax records. The combined information collected as part of the initiative, will be used by Leeds Empties for this work, to identify owners who may wish to bring their empty property/s back into use.

The owners details will not be made publicly available, the data will only be shared with Leeds Empties who will be working in partnership and on behalf of Leeds City Council.

Partners to this Agreement will ensure that their staffs operate in accordance with the eight key principles of the 1998 Data Protection Act and other national guidance on confidentiality, and will facilitate the sharing of information wherever possible. The eight key principles of the 1998 Data Protection Act are set out in Appendix 2.

APPENDIX 2

Provide details of individuals who will have access to the Data. This could be supplemented by the use of Data Access Agreements.

Key principles of the Data Protection Act 1998

The eight guiding principles of the Data Protection Act 1998 are:

1. **Fair and lawful:** personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless certain conditions are met, also the processing must adhere to the fair processing code.
2. **Use for specified purposes:** personal data shall be obtained only for one or more specified purposes, and shall not be further processed in any manner incompatible with that purpose or purposes.
3. **Adequate, relevant and not excessive:** personal data shall be adequate, relevant and not excessive in relation to the purpose.
4. **Accurate and up-to-date:** personal data shall be accurate and, where necessary, kept up to date.
5. **Don't keep longer than necessary:** personal data processed for any purpose or purposes shall not be kept longer than is necessary for that purpose or those purposes.
6. **Rights given under the Act:** personal data shall be processed in accordance with the rights of the data subject under this act.
7. **Security:** appropriate and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. **Disclosure outside Europe:** personal data shall not be transferred to a country or territory outside the European Economic Area, unless that country or territory ensures an adequate level of protection.