

Data Sharing Agreement
In Relation to: Waste Enforcement
This Agreement is made between:
Waste Investigations Support & Enforcement
And
Rushcliffe Borough Council

Party: means a Party to this Agreement

Agreement: means this contract identified and as set out in the attached DP Schedule;

Contractor: means Waste Investigations Support & Enforcement Limited;

Contractor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

GDPR CLAUSE DEFINITIONS:

Data Protection Legislation: means: (i) prior to 25 May 2018, the Data Protection Act 1998; and (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulations), the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and all Law relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Controller, Processor, Data Subject, Personal Data, Sensitive Personal Data, Personal Data Breach, Data Protection Officer: take the meaning given in the GDPR and the Data Protection Act 2018.

Data Loss Event: means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

DPA 2018: means the Data Protection Act 2018.

Data Protection Impact Assessment: means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Schedule or DP Schedule means the schedule attached to these provisions.

Data Subject Access Request: means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

GDPR: means the General Data Protection Regulation (*Regulation (EU) 2016/679*)

Protective Measures: means appropriate technical and organisational measures which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-Processor: means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

A1. DATA PROTECTION

A1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, Rushcliffe Council (“The Council”) and Waste Investigations Support & Enforcement (WISE) is the Controller in respect of the Personal Data. The Council’s Data Protection Officer is Greg Dwyer and WISE’s Data Protection Officer is John Dunne and the Contractor is also a controller and Processor for the Council. For the avoidance of doubt the only processing that the Contractor is authorised to do is listed in the DP Schedule by the Council and may not be determined by the Contractor.

A1.2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

A1.3 The Legal bases to share information between the contractor and council is: Through “Implied powers” – The legislation regulating the activities rely in an implied power to share information derived from the express provisions of the legislation. It is reasonable that the issuing of a FPN or the enforcement of environmental offences on behalf of the council during which all parties are informed of the offences, legislation and possible outcome of prosecution indicates the proposed data sharing.

Disclosure of information will be conducted within the legal framework of the Data Protection Act 2018, the Human Rights Act 1998 and in compliance with the common law duty of confidence.

A1.4 Where required by the Council, the Contractor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

A1.5 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with the DP Schedule, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the DP Schedule);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Contractor's duties under this clause;
 - (b) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-Processor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement;
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

A1.5a The Contractor shall, in relation to any Personal Data shared in connection with its obligations under this Agreement:

- (a) Please state process for sharing data with the Council as you have above.

A1.6 Subject to clause A1.7, the Contractor shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

A1.7 The Contractor's obligation to notify under clause A1.6 shall include the provision of further information to the Council in phases, as details become available.

A1.8 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause A1.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Council following any Data Loss Event;
- (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

A1.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Council determines that the processing is not occasional;
- (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

A1.10 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

A1.11 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

A1.12 Before allowing any Sub-Processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Council in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Council;
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause A1.12 such that they apply to the Sub-Processor; and
- (d) provide the Council with such information regarding the Sub-Processor as the Controller may reasonably require.

A1.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.

A1.14 The Contractor may, at any time on not less than 30 Working Days' notice, request that this clause be revised or replaced with any applicable controller to processor standard clause or similar terms forming part of an applicable certification scheme which subject to the written agreement of the Controller shall apply when incorporated by attachment to this Agreement).

A1.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

A1.16 Notwithstanding any other provision herein contained, the Contractor shall indemnify the Council in respect of any, fine, loss, claim, action damages or demand imposed on or suffered by the Council as a result of any breach by the Contractor of this clause.

We, the undersigned, agree to the terms set out herein:




On behalf of the Controller

On behalf of the Processor

Date: 15th December 2020

Date: 14th December 2020

Data Protection Schedule

Description of Contract:	Waste Enforcement Services (pilot)
Contract Date:	5 th January 2021
Full Company Name:	Waste Investigations Support & Enforcement Limited
Authorised Signatory:	John Dunne
Title:	Managing Director
Date:	14/12/2020
Subject matter of the processing	FPN recipients and Employee Data
Duration of the processing	For the duration of the Contract
Nature and purposes of the processing	<p>In order to execute performance of the Waste Enforcement Contract, it is necessary for the Contractor to obtain and process personal data in relation to criminal offences that may result in liability being discharged via payment of a fixed penalty notice. The Contractor obtains this personal data on behalf of the Controller executing its statutory function.</p> <p>It is necessary for the Contractor to share with the Controller details of FPNs issued, challenges received against these FPNs and any FPNs that remain unpaid thereby subject to prosecution.</p> <p>Personal data in relation to FPNs issued and their status may be shared with the Controller in order to</p>

	<p>monitor performance of the contract, for the purposes of legal proceedings or for other legitimate reasons.</p> <p>The Controller may also share data in relation to complaints received to enable the Contractor to investigate and review cases. Again, this is for a legitimate interest and in order to monitor performance of the Contract. A comprehensive overview on how we process data collected from a data subject has been documented in WISE 04 – Privacy Policy</p>
Type of Personal Data	<p>Names, addresses, vehicle details, correspondence, telephone numbers, email addresses and video evidence for FPN recipients.</p> <p>Name, address, employment screening and DBS checks of Employees of the Controller charged with issuing the FPNs. As referenced in WISE 04 – Privacy Policy</p>
Categories of Data Subject	Staff and Members of the Public.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>Data is retained for the duration of the contract and only used for the specific purpose for which it is shared. In any case, the data is destroyed when no longer required by law.</p> <p>A list of agreed methods for the retention of sensitive data has been documented within the WISE 03 – Data Retention Policy.</p>