

DATA SHARING AGREEMENT

Between Coventry City Council and Coventry Business Improvement District Limited

ISA ref no:

Dated:

Reviewed:

Author	Version	Date
Barrie Strain	0.1	12/02/18

Parties

- (1) THE COUNCIL OF THE CITY OF COVENTRY, whose principal address is at The Council House, Earl Street Coventry CV1 5RR (CCC); and
- (2) Coventry BID Limited registered as a company limited by guarantee in England with company number 10726623 and, whose principal address is at Old Grammar School, Hales Street Coventry CV1 1JD (BID Company).

Each referred to as a “Party” and together the “Parties”.

Background

The following agreement between CCC and the BID Company reflects the arrangements that they have agreed to put in place to facilitate the sharing of Personal Data relating to those liable to pay (BID) rates for Coventry BID between the Parties acting as data controllers, and explains the purposes for which that Personal Data may be used.

The parties agree to share and use the Personal Data on the terms set out in this Agreement.

1 INTERPRETATION

1.1 Definitions:

Agreed Purposes: shall mean those purposes set out in clause 2.3 of this Agreement.

Business Days: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business or the CCC closure day.

Coventry BID: Coventry Business Improvement District.

Data Discloser: the Party transferring the Personal Data to the Data Receiver.

Data Protection Authority: the relevant data protection authority in the territories where the Parties to this Agreement are established, here the Information Commissioner’s Office (ICO).

Data Receiver: the Party receiving the Personal Data from the Data Discloser.

Data Security Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

DPA: the Data Protection Act 1998 (DPA), the Data Protection Directive (95/46/EC), from May 25th 2018 - the General Data Protection Regulation (2016/679) (GDPR), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended) and all applicable laws and regulations relating to the processing of the Personal Data and privacy, including where applicable the guidance and codes of practice issued by the UK Information Commissioner or any other national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

Shared Personal Data: the Personal Data and Sensitive Personal Data/Special Category Data to be shared between the Parties under clause 4 of this Agreement.

Subject Access Request: has the same meaning as "Right of access to personal data" in section 7 of the DPA.

Data Controller, Data Processor, Data Subject and Personal Data, Sensitive Personal Data, Special Category Data, processing, Right to Object and appropriate technical and organisational measures shall have the meanings given to them in the DPA and the GDPR.

Term: the length of this Agreement as defined in clause 16.

2 PURPOSE

- 2.1 This Agreement sets out the framework for the sharing of Personal Data between the Parties as Data Controllers and defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.
- 2.2 The Parties consider this data sharing initiative necessary for the proper administration of the Coventry BID. The aim of the data sharing initiative is to ensure the efficient billing and collection of BID payments. It will serve to benefit Coventry residents and local businesses by maximising the collection of revenue for Coventry BID.
- 2.3 The Parties agree to only process Shared Personal Data, as described in Clause 4.1 for the following purposes:
 - for the billing, collection, enforcement and general administration of Coventry BID (the **Agreed Purpose**) .
- 2.4 NOT USED
- 2.5 The Parties agree that this Agreement formalises a lawful transfer of Personal Data between the Parties and presents no new or additional privacy concerns. A risk assessment has been conducted in respect of the Personal Data to be shared and the necessity of the sharing; this Agreement serves to address any residual privacy or information risks and document the actions taken to identify, address and mitigate those risks wherever possible.
- 2.6 The Parties shall not process Shared Personal Data in a way that is incompatible with the Agreed Purposes.
- 2.7 The Parties are not Joint Controllers as defined under the GDPR and each Party shall have the right to determine the manner and processing of the Shared Personal Data.

3 COMPLIANCE WITH NATIONAL DATA PROTECTION LAWS

- 3.1 Each Party must ensure compliance with applicable national data protection laws at all times during the Term.

3.2 Each Party has a valid registration with its national Data Protection Authority if required which, by the time that the data sharing is expected to commence, covers the intended data sharing pursuant to this Agreement.

(a) Coventry City Council Registration Number Z6007285

(b) Coventry BID Limited Registration Number [to be inserted]

4 SHARED PERSONAL DATA

4.1 For the purposes of Agreed Purposes, the following types of Personal Data may be shared between the Parties during the Term:

- Name
- Address
- Contact telephone numbers/email addresses
- Account reference numbers
- Account balances and payment history
- Details of enforcement activity
- Rates payable
- Business name
- Any other such personal data as may be required from time to time to achieve the Agreed Purpose

4.2 In respect of clauses 4.1 the Data Receiver will, as far as is reasonably practical, anonymise or pseudoanonymise all Personal Data contained in statistics, reports and summaries to minimise the amount of Personal Data shared.

4.3 Where a residual risk remains of Data Subjects being identifiable from the data shared, the Data Discloser will handle this in the strictest confidence and in compliance with the DPA and GDPR and the terms of this Agreement.

4.4 The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes.

5 FAIR AND LAWFUL PROCESSING

5.1 Each Party shall ensure that it processes the Shared Personal Data fairly and lawfully in accordance with clause 5.2 during the Term of this Agreement.

5.2 For the purposes of Agreed Purposes, each Party shall ensure that it Processes Shared Personal Data on the basis of one of the following legal grounds:

(a) processing is necessary for the purposes of the legitimate interests pursued by the Parties except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the Data Subject (DPA Sch 2.6.1)

or, in the case of data sharing on or after the 25th May 2018:

(b) FOR CCC - processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (GDPR Art 6. 1 (e))
or,

- (c) FOR BID COMPANY - processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data (GDPR Art 6. 1 (f)).

5.3 Where Sensitive Personal Data or Special Category Data is shared this will be on the following additional grounds:

- (a) the processing of Sensitive Personal Data is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons—
 - (i) holding different beliefs, or (ii) of different states of physical or mental health or different physical or mental conditions, with a view to enabling such equality to be promoted or maintained, providing:
 - the data use does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and
 - does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person. (DPA Sch 3.10.7.1)

or, in the case of data sharing on or after the 25th May 2018:

- (b) processing of Special Category Data is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject (GDPR Art 9.2 (g))

5.4 For the purposes of Agreed Purposes, Personal Data (as listed in clause 4.1) may be shared in addition to Personal Data relating to alleged or actual criminal offences, only where one of the following lawful grounds apply:

- a) the processing is necessary for the exercise of any functions conferred on any person by or under an enactment (DPA Sch 3.7.1(b))
- b) The processing is necessary in order to protect the vital interests of the data subject or another person where the data subject is physically or legally incapable of giving consent (DPA Sch 3.1)

(GDPR Art 9.1 (c))

or, in the case of data sharing on or after the 25th May 2018:

- c) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject (DPA Sch 3.10.1.1.a) (GDPR Art 9.2 (g)).

5.5 Both Parties shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data the Parties are sharing, the circumstances in which it will be shared, the

purposes for the data sharing and either the identity with whom the data is shared or a description of the type of organisation that will receive the Personal Data.

- 5.6 Both Parties undertake to inform Data Subjects of the purposes for which it will process their Personal Data and provide all of the information that it must provide in accordance with its own applicable laws, to ensure that the Data Subjects understand how their Personal Data will be processed by the Data Controller.

6 DATA QUALITY

- 6.1 The Data Discloser shall ensure that Shared Personal Data is accurate.
- 6.2 Where either Party becomes aware of inaccuracies in Shared Personal Data, they will notify the other Party.
- 6.3 Shared Personal Data shall be limited to the Personal Data described in clause 4.1 and clause 4.2 and 4.3 of this Agreement.

7 DATA SUBJECTS' RIGHTS

- 7.1 Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. Data Subjects may also request rectification, erasure or blocking of their Personal Data.
- 7.2 The Parties shall maintain a record of Subject Access Requests, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- 7.3 The Parties agree that the responsibility for complying with a Subject Access Request falls to Party receiving the Subject Access Request in respect of the Personal Data held by that Party.
- 7.4 The Parties agree to provide reasonable and prompt assistance (within 5 Business Days of such a request for assistance) as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.

8 DATA RETENTION AND DELETION

- 8.1 The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 8.2 Notwithstanding clause 8.1, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and/or industry.
- 8.3 The Data Receiver shall ensure that any Shared Personal Data are returned to the Data Discloser or destroyed in the following circumstances:
- (a) on termination of this Agreement for whatever reason;

- (b) on expiry of the Term (unless extended further to the terms of this Agreement);
- (c) once processing of the Shared Personal Data is no longer necessary for the purposes it were originally shared for, as set out in clause 2.3.

9 TRANSFERS

9.1 For the purposes of this clause, transfers of Personal Data shall mean any sharing of Personal Data by the Data Receiver with a third party, and shall include, but is not limited to, the following:

- (a) sharing of the Shared Personal Data with any other third party
- (b) publication of the Shared Personal Data via any medium, including, but not limited to; social media, websites, publically available communications.
- (c) storing Shared Personal Data on servers outside the EEA.
- (d) subcontracting the processing of Shared Personal Data to data processors located outside the EEA.
- (e) granting third parties located outside the EEA access rights to the Shared Personal Data.

9.2 The Data Receiver shall not share or transfer the Shared Personal Data with a third party without the express written permission of the Data Discloser.

9.3 Where express written permission has been granted further to clause 9.2, the Data Receiver shall not disclose or transfer Shared Personal Data outside the EEA without ensuring that adequate and equivalent protections will be afforded to the Shared Personal Data,

9.4 Clause 9.2 will not apply to any data transfers carried out by the Data Discloser in respect of Shared Personal Data.

10 SECURITY AND TRAINING

10.1 The Data Discloser shall be responsible for the security of transmission of any Shared Personal Data in transmission to the Data Receiver by using appropriate technical methods. These are detailed below:

- Reports will be emailed in password protected Excel format with password disclosure issued in a separate email.

10.2 The Parties agree to implement appropriate technical and organisational measures to protect the Shared Personal Data in their possession against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, including but not limited to:

- Ensuring IT equipment, including portable equipment is kept secure at all time ;
- not leaving portable equipment containing the Personal Data unattended;
- ensuring that staff use appropriate secure passwords for logging into systems or databases containing the Personal Data;

- ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;
- In particular ensure that any Sensitive Personal Data is stored and transferred (including where stored or transferred on portable devices or removable media) using industry standard 256-bit AES encryption or suitable equivalent;
- limiting access to relevant databases and systems to those of its officers, staff agents and sub-contractors who need to have access to the Personal Data, and ensuring that passwords are changed and updated regularly to prevent inappropriate access when individuals are no longer engaged by the Party;
- conducting regular threat assessment or penetration testing on systems.
- Ensuring all staff handling Personal Data have been made aware of their responsibilities with regards to handling of Personal Data.
- Allowing for inspections and assessments to be undertaken by the other Party in respect of the security measures taken, or producing evidence of those measures if requested.
- Conducting regular threat assessment and penetration testing on the systems.

10.3 The Data Receiver shall obtain a commitment of confidentiality from any person it allows to process the Personal Data, unless such persons are already under such a duty by law.

11 DATA SECURITY BREACHES AND REPORTING PROCEDURES

11.1 The Parties are under a strict obligation to notify any potential or actual losses of the Shared Personal Data to the other Party as soon as possible and, in any event, within 1 Business Day of identification of any potential or actual loss to enable the Parties to consider what action is required in order to resolve the issue in accordance with the applicable national data protection laws and guidance.

11.2 Clause 11.1 also applies to any breaches of security which may compromise the security of the Shared Personal Data.

11.3 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner.

12 RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE DATA PROTECTION AUTHORITY

12.1 In the event of a dispute or claim brought by a Data Subject or the Data Protection Authority concerning the processing of Shared Personal Data against either or both Parties, the Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

12.2 The Parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Data Protection Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

12.3 In respect of breaches relating to this Agreement, each Party shall abide by a decision of a competent court of the Data Discloser's country of establishment or of any binding decision of the relevant Data Protection Authority.

13 WARRANTIES

13.1 Each Party warrants and undertakes to each other that it will:

- (a) Process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations.
- (b) Make available upon request to the Data Subjects who are third party beneficiaries a copy of this Agreement, contains confidential information.
- (c) Respond within a reasonable time and as far as reasonably possible to enquiries from the relevant Data Protection Authority in relation to the Shared Personal Data.
- (d) Respond to Subject Access Requests in accordance with the terms of this Agreement and in accordance with the DPA and GDPR.
- (e) Where applicable, maintain registration with all relevant Data Protection Authorities to process all Shared Personal Data for the Agreed Purpose.
- (f) Take all appropriate steps to ensure compliance with the security measures set out in clause 10 above.

13.2 The Data Discloser warrants and undertakes to the Data Receiver that it will ensure that the Shared Personal Data are accurate.

13.3 The Data Receiver warrants and undertakes to the Data Discloser that it will not disclose or transfer Shared Personal Data to third parties either within or outside the European Economic Area (EEA) unless it complies with the obligations set out in clauses 9.2 and 9.3 above.

14 INDEMNITY

14.1 The Parties undertake to each other to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of this Agreement, except to the extent that any such liability is excluded under Clause 15.22.

14.2 Indemnification hereunder is contingent upon

- (a) the Party to be indemnified (the indemnified party) promptly notifying the other Party (the indemnifying party) of a claim,
- (b) the indemnifying party having sole control of the defence and settlement of any such claim, and
- (c) the indemnified party providing reasonable cooperation and assistance to the indemnifying party in defence of such claim.

15 LIMITATION OF LIABILITY

15.1 Neither Party excludes or limits liability to the other Party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence;
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any matter for which it would be unlawful for the Parties to exclude liability.

15.2 Subject to Clause 15.1 neither Party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (c) any loss or liability (whether direct or indirect) under or in relation to any other contract.

16 TERM AND TERMINATION

16.1 This Agreement shall commence on 1 March 2018 and shall continue in force until **31st March 2023** "the Term".

16.2 The Agreement shall automatically terminate on expiry of the Term unless, following a review of the terms of this Agreement, the Parties agree to extend this Agreement for an agreed period.

16.3 Any such renewal shall be in writing signed by an authorised signatory of both Parties and the Parties shall seek to agree any such renewal at least [2] months in advance of the expiry of the Term.

17 ROLES AND RESPONSIBILITIES

17.1 Each Party shall nominate a single point of contact within their organisation who can be contacted in respect of queries or complaints regarding the DPA, GDPR and/or compliance under the terms of this Agreement.

COVENTRY CITY COUNCIL

Data Protection Officer

[Insert name and address]

THE BID Company

[Insert name and address]

18 THIRD PARTY RIGHTS

18.1 No one other than a Party to this Agreement shall have any right to enforce any of its terms.

19 VARIATION

19.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

20 WAIVER

20.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21 SEVERANCE

21.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

21.2 If a provision of this Agreement (or part of any provision) is found to be illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

22 ASSIGNMENT

22.1 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

23 CHANGES TO THE APPLICABLE LAW

23.1 In case the applicable data protection and ancillary laws change in a way that this Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree that they will negotiate in good faith to review this Agreement in light of the new legislation.

24 NO PARTNERSHIP OR AGENCY

24.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

24.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

25 ENTIRE AGREEMENT

25.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter, namely the sharing of Personal Data, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25.2 Each Party acknowledges that in entering into this Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

25.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

25.4 Nothing in this clause shall limit or exclude any liability for fraud.

26 FORCE MAJEURE

26.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the Party not affected may terminate this Agreement by giving 30 days' written notice to the affected Party.

27 NOTICE

27.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other Party as set out in Clause 27.2.

27.2 The Parties' addresses and contacts are:

Party: Coventry City Council

Contact: Information Asset Owner

Barry Hastie, Director of Finance and Corporate Services

The Council House
Earl Street, Coventry
CV1 5RR

Party: Coventry BID

Contact:

[insert details and address]

27.3 Any notice shall be deemed to have been duly received if delivered personally, when left at the address set out above or, if sent by pre-paid first-class post or recorded delivery, at 10.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

27.4 This Clause 27 shall not apply to the service of any proceedings or other documents in any legal action.

27.5 A notice required to be given under or in connection with the Agreement shall not be validly served if sent by email or fax.

28 GOVERNING LAW AND JURISDICTION

28.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

28.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

29 COUNTERPARTS

29.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

This has been entered into on the date stated at the beginning of it.

EXECUTED as an agreement:

SIGNED for and on behalf of

The Council of the City of Coventry

Name: Barry Hastie

Position: Director of Finance and Corporate Services

Signature:

EXECUTED as an agreement:

SIGNED for and on behalf of

Coventry BID Limited

Name:

Position:

Signature: