



Data Processing Agreement - V.3

Overview

It is a requirement under the Data Protection Act 2018 (DPA) that there are written contracts between Data Controllers and Data Processors. Such contracts must now include certain specific terms, as a minimum. This document acts as an Agreement to fulfil the minimum contractual terms required by the DPA.

These terms are designed to ensure that processing carried out by a Data Processor meets all the requirements of the DPA (not just those related to keeping personal data secure) and that the Data Controller remains in control of the personal data – this is the accountability principle.

Data Processors must review their new obligations under the DPA. Data Processors now have responsibilities and liabilities in their own right.

Definitions used in this document	
DPA	Data Protection Act 2018 (referring to GDPR)
GDPR	General Data Protection Regulation Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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; implemented as UK-GDPR from 1st January 2021.
Data Controller	The Havebury Housing Partnership, a charitable registered society under the Co-operative and Community Benefit Societies Act 2014 (number 7648) regulated by the Regulator of Social Housing (LH4339). Registered office: Havebury House, Western Way, Bury St Edmunds, Suffolk, IP33 3SP
Data Processor	<i>[The successful candidate upon award of contract]</i>

Scope

Please list the purposes of the data processing. For each one, please choose a legal basis from GDPR Article 6 and Article 9(2). They are Consent, Contractual, Legal Obligation, Vital Interests, Public Task (if you are a public body) and Legitimate Interest.

In addition, for processing special categories of personal data (race, ethnic origin, political and religious opinions, trade union membership, genetics, biometrics for ID, health, sexual orientation, sex life and criminal convictions) you must select one of these legal basis: Consent, Obligations, Vital Interests, Already Public, Judicial, Substantial Public Interest, Medical, Health Public Interest or Scientific Interest.

Please identify which categories of personal data will be processed in each case and which data subjects will be affected.

If you are relying on a legal obligation of the Data Controller as a legal basis, please include reference to the legislation.

Purpose	Legal basis	Categories of data	Data subject(s)
To undertake works to trees	Contractual	Tree Data, tenant meta-data (Scheme/Block references)	Tenants, Havebury
To contact individual tenants and take into consideration any special needs.	Contractual	Name, Contact information, special needs.	Tenants
Lone worker awareness	Legal obligation	Lone Worker	Tenants

Written Instructions

The Data Processor must adhere to the following instructions when processing personal data within the scope of this Agreement.

Processing	
Contract (that this agreement is linked to)	Arboricultural Maintenance Services Contract (Tree Works) [2022-2025]
Data retention guidelines (return or deletion of data, duration, etc.)	To be agreed at pre-contract review meeting.
Destruction methods acceptable and processes required to be in place	Methods to be agreed at final contract review meeting.

Limitations on how data will be used	Data will only be used for the above purposes.
Authorisation for further sharing of data	No authorisation given other than when the Data Controller agrees.
What legal obligations do the Data Processor have that require it to process personal data without due regard to written instructions of the Data Controller?	[N/A - or to be identified by the successful candidate prior to the start of contract]
Will the Data Processor send this personal data outside the EU for processing?	[To be identified by the successful candidate prior to the start of contract]

Sharing

The Data Controller and Data Processor must adhere to the following instructions when sharing personal data within the scope of this Agreement.

Sharing	
When will this data be shared, and how often?	<i>[To be identified during the contract and prior to any relevant works taking place]</i> Contract Maps will be shared when necessary for the purpose of showing location of trees and tree works. These maps will show the locations of tenants' properties, but no personal data of those tenants. These will be updated as and when required to undertake the contract. Further spreadsheets detailing the works required will be shared that can relate each record of work to a Contract Map.
What records will exist of data sharing taking place?	<i>[To be identified prior to the start of contract]</i>
How will the Data Controller identify the Data Processor and their request for data?	Most data relating to the contract will not contain any personal information on tenants. Any request for or supply of tenant information must be processed securely by nominated personnel with at least factors of authentication.
How will the data be shared?	<i>[Encrypted by email]</i> On rare occasions where there is an emergency within a tenant's property, we will establish a process for sharing only the necessary data (for example name, address, and phone number) from the Data Controller to the Data Processor to be agreed at the start of the contract.

Is there a more secure mechanism for sharing this data?	<i>[To be identified prior to the start of contract]</i>
How will data be kept up-to-date?	<i>Personal data (such as contact data) will not be required to be retained by the Data Processor after the works have been completed and this data will then be subject to destruction. Contract Maps and tree data will be issued as updates become available and are relevant to the contract.</i>

Sign-off

The Data Controller must complete the checklist to ensure that they are satisfied that the processing under the Agreement and its compliance with the principles of GDPR.

Compliance checklist	
Personal data will be processed lawfully, fairly and transparently	
Personal data will be collected and processed for a specified, explicit and legitimate purpose	
Personal data will not be further processed in a manner that is incompatible	
Personal data will be adequate, relevant and limited to what is necessary for the purpose	
Personal data will be accurate, and where necessary, up to date	
Personal data will be kept for only as long as necessary for the purpose	
Personal data will be securely processed with appropriate controls in place	
The Data Controller will be able to demonstrate compliance with DPA	

As per clause 22 in the Agreement Terms, the terms become binding between the Data Controller and Data Processor once signed below:

Agreement		
Authorised signature of the Data Controller	Signature	
	Name	
	Position	
	Organisation	The Havebury Housing Partnership
	Date	
Authorised signature of the Data Processor	Signature	<i>[The successful candidate to complete]</i>
	Name	
	Position	
	Organisation	
	Date	

The signed Agreement must be stored by both parties as proof of a contractual relationship as per Article 28 of GDPR as interpreted and enforced in the Data Protection Act 2018.

Standard Terms

Where reference is made to GDPR in the below standard terms, the equivalent clause of the Data Protection Act 2018 will apply.

General processing

1. The Data Processor will only process personal data in accordance with the Written Instructions of the Data Controller, unless required to do so by law.
2. The Data Processor needs to tell the Data Controller what they are required to do by law, before they do it (unless the law also prevents the Data Controller from being told for reasons of important public interest).

Appropriate measures

3. The Data Processor will ensure that persons processing the data are subject to a duty of confidence. The Data Processor must obtain a commitment of confidentiality from anyone it allows to process the personal data, unless they are already under such a duty by law. This covers the Data Processor's employees as well as any temporary workers and agency workers. Data Subjects must have protection against non-compliant disclosures.
4. The Data Processor will take appropriate measures to ensure the security of processing, including adoption of security measures including encryption, pseudonymisation, resilience of processing systems and backing up personal data to be able to reinstate the system.

Sub-processors

5. The Data Processor will only engage sub-processors with the prior consent of the Data Controller under a written contract.
6. The Data Processor should not employ a Sub-Processor without the prior specific or general written authorisation of the Data Controller.
7. If a Sub-Processor is employed under the prior general written authorisation of the Data Controller, the Data Processor should let the Data Controller know of any changes it has made and give the Data Controller a chance to object to them.
8. If the Data Processor employs a Sub-Processor, then it must impose the contract terms that are required by Article 28.3 of the GDPR on the Sub-Processor. If the Data Processor employs a Sub-Processor, then the Data Processor will still be liable to the Data Controller for the compliance of the Sub-Processor.

Assisting the Data Controller

9. The Data Processor will assist the Data Controller in providing subject access and allowing Data Subjects to exercise their rights under the GDPR.
10. The Data Processor will assist the Data Controller in meeting its obligations to Data Subjects under chapter III of the GDPR, by having appropriate technical and organisational measures.
11. The Data Processor will assist the controller in meeting its obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.

12. The Data Processor will assist the Data Controller in meeting its Article 32 obligation to keep personal data secure.
13. The Data Processor will assist the Data Controller in meeting its Article 33 obligation to notify personal data breaches to its supervisory authority.
14. The Data Processor will assist the Data Controller in meeting its Article 34 obligation to advise data subjects when there has been a personal data breach.
15. The Data Processor will assist the Data Controller in meeting its Article 35 obligation to carry out data protection impact assessments (DPIAs).
16. The Data Processor will assist the Data Controller in meeting its Article 36 obligation to consult with its supervisory authority where a DPIA indicates there is an unmitigated high risk to the processing.
17. The Data Processor will delete or return all personal data to the Data Controller as requested at the end of the contract and submit to audits and inspections, provide the Data Controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the Data Controller immediately if it is asked to do something infringing the DPA or other data protection law of the EU or a member state.
18. The Data Processor must tell the Data Controller immediately if it thinks it has been given an instruction which doesn't comply with the DPA, or related data protection law.
19. The Data Processor will provide the Data Controller with all the information that is needed to show that that both Data Processor and Data Controller have met the obligations of Article 28.
20. The Data Processor will submit and contribute to audits and inspections that the Data Controller carries out, or another auditor appointed by the Data Controller carries out.

End of contract

21. At the end of the contract, The Data Processor will, at the choice of the Data Controller, either delete or return to the Data Controller all the personal data it has been processing on behalf of the Data Controller; an exception to this general rule applies if the processor is required to retain the personal data by law.

Compliance

22. For these terms to become binding, authorised signatures are required from both Data Controller and Data Processor.
23. Once signed, the terms will remain binding until the Data Processor has completed the deletion or return of all personal data to the satisfaction of the Data Controller.
24. These terms may not be negotiated or amended in any way, or at any time.