

## MEMORANDUM OF UNDERSTANDING

**Between:**

Department of Environment, Food and Rural Affairs (Defra)

**AND**

Gedling Borough Council

**In respect of:**

**Provision of taxi and private hire vehicle licensing data as required by the Air Quality (Taxis and Private Hire Vehicles Database) (England and Wales) Regulations 2019**

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### **DEFINITIONS**

**Data Protection Legislation:** the GDPR, the LED, the DPA 2018 and any applicable national implementing Laws as amended from time to time, and all applicable Law about the processing of personal data and privacy;

**Controller, Processor, Processing, Data Subject, Personal Data, Special Categories of Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR.

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

**Data Subject Access Request:** 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.

**DPA 2018:** Data Protection Act 2018

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

**LED:** Law Enforcement Directive (*Directive (EU) 2016/680*)

**Protective Measures:** 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:** any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

**Licensing Authority:** the licensing authority who is party to this agreement, [INSERT NAME OF LICENSING AUTHORITY]

**Air Quality Regulations:** the Air Quality (Taxis and Private Hire Vehicles Database) (England and Wales) Regulations 2019

## **1. Parties to this Memorandum of Understanding**

1.1. The Parties to this Memorandum of Understanding (MoU) are the Department of Environment, Food and Rural Affairs (Defra) and the Licensing Authority.

## **2. Purpose of this MoU**

2.1. The Purpose of this MoU is to clarify how the Parties will meet their respective obligations under Data Protection Legislation in relation to the processing of Personal Data as necessary to meet the requirements of the Air Quality Regulations. It explains how the parties will co-operate to ensure compliance with all relevant legislation.

## **3. Description of the Data and method of sharing**

3.1. The Air Quality Regulations specify the data that The Licensing Authority is required to share with Defra – the Data

3.2. The Air Quality Regulations specify the minimum frequency at which the Data must be shared with Defra. The Data must be transmitted to Defra at least once a week and additionally as requested for database development.

3.3. The Licensing Authority will transfer the Data to Defra using either an Application Programming Interface (API) or a CSV upload. In executing the transfer, both parties will comply with the security arrangements described in clause 9.

#### **4. The Licensing Authority's legal basis under the GDPR for sharing the Data with Defra**

4.1. The legal basis under Data Protection Legislation for The Licensing Authority to share Personal Data with Defra and Defra's further processing of the Personal Data for the Purpose is Article 6(1)(c) of the GDPR – i.e. the processing is necessary for compliance with a legal obligation to which the controller is subject.

#### **5. Accountability**

5.1. Defra is a separate Controller for the Data once received from The Licensing Authority and is responsible as a Controller for complying with Data Protection Legislation in relation to its further processing of the Data.

#### **6. Fairness and Transparency**

6.1. Both parties will provide appropriate privacy notices to data subjects, in accordance with the requirements of the GDPR and all relevant good practice guidance issued by the Information Commissioner's Office. Specifically, The Licensing Authority will inform data subjects that Licensing Authorities are required by Law to share the Data with Defra so that Defra can create a database. Defra may, under contracts or similar agreements, use third party organisations to process the data on its behalf. This will include the creation and provision of the database to support local authorities' ability to charge in relation to clean air zones.

#### **7. Accuracy of Shared Data**

7.1. The Licensing Authority will take all reasonable steps to ensure the accuracy and currency of the Data before it is transmitted to Defra. Where the Licensing Authority becomes aware of inaccuracies in the Data after its transmission to Defra, it will notify Defra of those inaccuracies as soon as reasonably practicable after the discovery and the parties will agree a suitable rectification plan.

7.2. Defra will take all reasonable steps to maintain the accuracy and currency of the Data and will notify The Licensing Authority if it becomes aware of any significant inaccuracies.

## **8. Retention of Shared Data**

- 8.1. Defra will retain the Data for a period not exceeding seven years for revenue purposes from the date received from The Licensing Authority subject to any relevant exemptions under Data Protection Legislation. Aggregated data may be retained for historic scientific analysis. Aggregated data means information which has been collated for monthly reports. Historical aggregated data will be retained indefinitely for scientific purposes.
- 8.2. The data will be held securely by Defra on Amazon Web Services within the London region. At the end of that retention period, Defra will arrange for the secure destruction or deletion of the Data in accordance with set procedures.

## **9. Data Security**

- 9.1. The Licensing Authority will ensure the safe transmission of the Data to Defra, in accordance with the security requirements of Data Protection Legislation and industry good practice.
- 9.2. Defra will ensure that its Processing of the Data meets the requirements of Data Protection Legislation, HMG Security Policy Framework and Defra's Personal Information Charter.

<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs/about/personal-information-charter>

These same requirements shall apply equally to any Processor contracted by Defra.

## **10. Data Processors**

- 10.1. Defra will ensure that the requirements of Article 28 and 29 are met in relation to the use of a Processor or Sub Processor for the processing of the Data.

## **11. Transfer of the Data**

- 11.1. Defra agrees not to transfer the Data (including access to the Data) to any country outside the UK without the prior consent of The Licensing Authority. This includes transfers of the Data by or to a Processor or Sub Processor used by Defra.

## **12. Data subjects rights**

- 12.1. Each party will answer any data subject rights requests that are made to them for Data that they are processing as a Controller, in accordance with their obligations under the GDPR.

## **13. Freedom of Information (FOI) and Environmental Information (EIR) Requests**

- 13.1. Each party will answer any FOI or EIR requests that they receive for information about: the Data for which they are the Controller; the Air Quality Regulations; or this MoU.
- 13.2. The party who has received the request will consult the other party where disclosure of information could impact on the interest of the other party.
- 13.3. The party who has received the request will take into account the views of the other party before deciding whether or not to disclose the information. Specifically, they will:
  - 13.4. Allow the other party a period of at least 5 working days to respond to the consultation;
  - 13.5. Not disclose any personal data that would breach Data Protection Legislation; and
  - 13.6. Not disclose information that would prejudice either the security of the Data or the security arrangements of the other party.

## **14. Audit and Inspection**

- 14.1. Defra reserves the right to carry out a review of The Licensing Authority's compliance with its obligations under the Air Quality Regulations and The Licensing Authority agrees to cooperate fully with any such review. Defra will give 28 days' notice of such a review.
- 14.2. Defra will share with The Licensing Authority the outcome of any audits or reviews that have been carried out on its activities as a Controller, to the extent that they have relevance to the processing of the Data received from The Licensing Authority.
- 14.3. Defra will notify The Licensing Authority of any audits that are being carried out by the Information Commissioner's Office under Data Protection Legislation, to the extent they have relevance to the processing of the Data received from The Licensing Authority.

**15. Data Loss Event**

15.1. In relation to Data received from The Licensing Authority, Defra will notify The Licensing Authority immediately of any serious Data Loss Event that meets the threshold for notification to the Information Commissioner’s Office or affected Data Subjects. Such notification will be to a contact nominated by the Licensing Authority. Less serious incidents will be reported on a monthly basis.

**16. Agreement and signatories**

16.1. The parties will review the terms of this MoU on an annual basis, or sooner if necessary to reflect a material change to any of the provisions in this MoU.

16.2. The parties enter into this MoU intending to honour its provisions, but the MoU does not constitute a legally binding contract and it does not affect the obligations that each party has under the legislation referred to in this MoU.

Signed on behalf of:

Defra

Gedling Borough Council

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[name and position]

**Kevin Nealon**  
**Community Protection and**  
**Pollution Control Manager,**  
**Public Protection Service**

Date

Date

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09<sup>th</sup> December 2019