

VPS COVID-19 Data Sharing Heads of Agreement

PARTIES

The State of Victoria through the Department of Premier and Cabinet

of 1 Treasury Place, East Melbourne Victoria 3002

(DPC)

and

The State of Victoria through the Department of Treasury and Finance

of 1 Treasury Place, East Melbourne Victoria 3002

(DTF)

and

The State of Victoria through the Department of Health and Human Services

of 50 Lonsdale Street, Melbourne Victoria 3000

(DHHS)

and

The State of Victoria through the Department of Education and Training

of 2 Treasury Place, East Melbourne Victoria 3002

(DET)

and

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**The State of Victoria through the Department of Justice and
Community Safety**

of Level 26, 121 Exhibition Street, Melbourne Victoria 3000

(DJCS)

and

**The State of Victoria through the Department of Jobs, Precincts
and Regions**

of 1 Spring Street, Melbourne Victoria 3000

(DJPR)

and

The State of Victoria through the Department of Transport

of 1 Spring Street, Melbourne Victoria 3000

(DOT)

and

**The State of Victoria through the Department of Environment,
Land, Water and Planning**

of 8 Nicholson Street, Melbourne Victoria 3000

(DELWP)

and

Victoria Police through the Chief Commissioner of Victoria Police

of 311 Spencer Street, Docklands Victoria 3008

(Victoria Police)

BACKGROUND

- a. Access to data is critical for responding to and recovering from the impacts of COVID-19. On 29 May 2020, the Missions Coordination Committee (MCC) endorsed the VPS COVID-19 Data Sharing Policy (Data Sharing Policy) to assist VPS agencies to share the data they need, while ensuring the right safeguards and controls are in place.
- b. This Agreement is an important part of implementing the Data Sharing Policy. It signals the Parties' willingness to work collaboratively to share data as a matter of urgency to inform COVID-19 policy and service planning, and budget decisions.
- c. This Agreement facilitates expeditious sharing by setting out the terms under which the Parties will share data in relation to any COVID-19 response and recovery efforts. Each individual sharing arrangement will be documented in a Data Sharing Schedule in the form prescribed by **Annexure 1**, allowing the parties flexibility to specify variables relevant to their particular circumstances.
- d. While the data specifications and any additional terms still need to be agreed between the Data Provider and Data User, having an overarching agreement in place avoids the need for lengthy negotiations and sign-off processes before each data transfer, while ensuring key risks have been considered and appropriate controls are in place to support urgent data sharing.

1. Definitions

In this Agreement, unless the context otherwise requires:

Commonwealth Data Sharing Principles means the principles set out in the Office of the National Data Commissioner's [Best Practice Guide to Applying Data Sharing Principles](#)

Data Provider means any Party that is identified as providing Shared Data under a Data Sharing Schedule

Data Security Standards means the Victorian Protective Data Security Standards under the *Privacy and Data Protection Act 2014* (Vic)

Data Sharing Policy means the [VPS COVID-19 Data Sharing Policy](#) which adopts a clear responsibility to share and the Commonwealth Data Sharing Principles in Victoria, and as endorsed by the Missions Coordination Committee on 29 May 2020

Data Sharing Schedule means a document in the form set out at **Annexure 1** that is used to record a specific data sharing arrangement under this Agreement

Data User means any Party that is identified as handling, accessing or using data under a Data Sharing Schedule

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Five Safes Assessment means a document in the form set out at **Annexure 2** that is used to assess each specific data sharing arrangement under this Agreement against the Five Safes risk management framework

Health Information means 'health information' as that term is defined in the *Health Records Act 2001* (Vic)

Intellectual Property Rights means all present and future rights, title and interests in and to copyright, neighbouring rights, trademarks (registered and unregistered), designs (registered and unregistered), all rights in relation to inventions (including patent rights, semi-conductor and circuit layout rights), trade-secrets and know-how, domain names, internet addresses, computer programs, trade or business names, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields

Party means a party to this Agreement

Personal Information means 'personal information' as that term is defined in the *Privacy and Data Protection Act 2014* (Vic), and includes sensitive information as defined in the Information Privacy Principles

Privacy Law includes the Information Privacy Principles under the *Privacy and Data Protection Act 2014* (Vic), and the Health Privacy Principles under the *Health Records Act 2001* (Vic)

Shared Data means the data described in the Table at the end of the Data Sharing Schedule for a specific data sharing arrangement under this Agreement.

2. Term and variation

- a) The term of this Agreement will commence for each Party when they execute this Agreement, and will continue for the duration of the Data Sharing Policy, unless earlier terminated.
- b) This Agreement may be amended or replaced only in writing executed by the Parties.
- c) Any Party may terminate this Agreement at any time for any reason by giving written notice to the other Parties. In the event a Party terminates this Agreement, any data sharing arrangements in place at the time of termination will continue until the purpose of the arrangement as set out in the Data Sharing Schedule is fulfilled.

OVERARCHING ARRANGEMENTS FOR DATA SHARING

3. Purpose of this Agreement

This Agreement sets out:

- i. the clear responsibility to share and the principles established by the Data Sharing Policy
- ii. the overarching purposes for which data can be shared
- iii. the general terms under which the Parties will share data, including in relation to data provision and security, privacy and confidentiality, on-sharing and retention/ destruction.

4. Responsibility to share and principles

The Parties agree to use best endeavours to meet their responsibilities under the Data Sharing Policy, including to:

- i. ensure relevant employees are aware of and comply with their responsibility to share data
- ii. encourage relevant employees to use the terms of this Agreement and the Data Sharing Schedule to ensure the right safeguards and controls are in place, while supporting urgent data sharing
- iii. undertake assessments to ensure data sharing arrangements under this Agreement comply with the Commonwealth Data Sharing Principles (as documented in the Five Safes Assessment).

5. Status of this Agreement

- a) This Agreement is not intended to create legal relations or constitute a legally binding contractual agreement between the Parties. No Party to this Agreement has the power to obligate or bind any other Party. Notwithstanding this clause, the Parties (including any Data Provider and Data User) intend to comply with all of the terms of this Agreement.
- b) The Parties acknowledge and agree that this Agreement does not constitute and may not be construed as constituting an agency, joint venture or partnership between them. Nothing in this Agreement will be deemed to authorise or empower any Party to act as agent for or with any other Party.

SPECIFIC DATA SHARING ARRANGEMENTS

6. Purposes for Shared Data

- a. Data can only be shared under this Agreement for the purpose of enabling the Parties to respond to and recover from the impacts of COVID-19.

- b. In particular, the Data User agrees to only handle and use the Shared Data for the purpose set out in Item 1 of the Data Sharing Schedule. The Data User will not use the Shared Data provided for any other purpose or project, except with the express written approval of the Data Provider.
- c. The permitted purpose referred to at clauses 6(a) and (b) applies to any findings and intended outputs described at Item 2 of Data Sharing Schedule, as well as any on-sharing that may be permitted under Item 6 in the same Schedule.

7. Provision of Shared Data

- a. The Data Provider will provide the Shared Data in the manner and with the frequency described in Item 3 of the Data Sharing Schedule.
- b. The Data Provider will advise the Data User of any additional data that may be relevant to the purpose set out in Item 1 of the Data Sharing Schedule. The Data Provider and Data User will use reasonable endeavours to negotiate access to any such additional data and amend the description of the Shared Data accordingly.
- c. The Data User may request changes to the scope of the Shared Data, in which case the Parties will use reasonable endeavours to negotiate amendments to description in the Data Sharing Schedule.
- d. The Data Provider and Data User will take any steps in relation to data quality that are set out in Item 5 of the Data Sharing Schedule. The Data Provider and Data User also agree to notify each other of any missing values, inconsistencies, inaccuracies, or other data quality issues in the Shared Data of which they become or are aware that are not dealt with under Item 5 in the same Schedule. The Data Provider will use reasonable endeavours to remediate any notified data quality issues.

8. Use and confidentiality of Shared Data

- a. The Data User will only use, disclose, publish, or grant access to the Shared Data, and will keep any files containing the Shared Data confidential, in the circumstances set out in Item 4 of the Data Sharing Schedule.
- b. In particular, the Data User may only use the Shared Data to produce the outputs and deal with the outputs in a manner described in Item 2 or on-share the Shared Data as permitted under Item 6 of the Data Sharing Schedule. If Item 2 specifies that the outputs are confidential the Data User must keep those outputs confidential and the Data User is not permitted to publicly release those outputs. The Parties acknowledge that Shared Data may be incorporated in the intended outputs, on the basis that this is in accordance with clause 10. If the Data User wishes to distribute the outputs or on-share the Shared Data

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outside of the terms of Items 2 and 6 of the Data Sharing Schedule, the Data User will seek the prior written consent of the Data Provider.

- c. Notwithstanding clause 8(a) and (b), the Data User may grant access to the Shared Data to:
 - i. those of its employees, agents, advisors, officers, officials, or Ministers and ministerial offices where this is consistent with the purpose set out in Item 1 of the Data Sharing Schedule
 - ii. in relation to requests to provide information and documents from agencies or entities with powers of investigation under law, including the office of the Auditor General, the Victorian Ombudsman, or the Independent Broad-based Anti-Corruption Commission, provided that before doing so, and if legally permissible, the Data User provides the Data Provider a reasonable opportunity to provide input, including taking any steps necessary to protect the confidentiality of the Shared Data
 - iii. comply with the law, including under Privacy Law or under the *Freedom of Information Act 1982* (Vic), provided that before doing so, and if legally permissible, the Data User provides the Data Provider a reasonable opportunity to provide input, including taking any steps necessary to protect the confidentiality of the Shared Data.
- d. For the purposes of clause 9(c), the Parties agree to cooperate and to provide each other all reasonable assistance that may be required, including by providing information or access to records to each other within a reasonable time to enable the relevant Party to provide the information and documents that have been requested.

9. Rights in relation to Shared Data and Intellectual Property

- a. The Data Provider confirms that it is authorised, and has all necessary rights and consents required, to disclose the Shared Data to the Data User under the terms set out in the Data Sharing Schedule.
- b. Each Party will ensure that:
 - i. it is entitled to use any Intellectual Property Rights it may require in performing its obligations under this Agreement and each Data Sharing Schedule;
 - ii. any Intellectual Property Rights created in relation to the Shared Data (including all outputs), will, upon its creation, be managed by that Party; and
 - iii. the other Party will be provided all the necessary licences to use any Intellectual Property Rights which that Party requires to fulfil its obligations under this Agreement and each Data Sharing Schedule.

10. Handling and security of Shared Data

- a. The Data Provider and Data User will only collect, use and disclose Personal Information and Health Information (or other restricted information) for legally authorised purposes and in a manner that complies with Privacy Law.

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- b. Notwithstanding clause 10(a), the Data Provider and Data User will adhere to a collection minimisation principle and only collect, use and disclose information to the extent that it is necessary and relevant to the purpose set out in Item 1 of the Data Sharing Schedule.
- c. Where this information is not needed for the intended purpose, the Data Provider shall ensure that the Shared Data does not contain any:
 - i. Personal Information
 - ii. Health Information
 - iii. other information that is subject to a restriction or prohibition from disclosure by law.
- d. Where Personal Information or Health Information is necessary, and it is legally permissible for the Data User to use this information for the intended purpose, a privacy impact assessment shall be conducted and documented using the template set out in **Annexure 3** to this Agreement. The Data Provider and Data User agree to comply with all conditions and terms of use set out in Item 4 of the Data Sharing Schedule, which will reflect the risk assessment conducted in the privacy impact assessment.
- e. The Data Provider and Data User will handle, store and protect the Shared Data in a way that is consistent with the Data Security Standards and in the circumstances set out in Item 3 of the Data Sharing Schedule.
- f. In particular, the Data User will keep the Shared Data in a secure manner within Australia and will take all reasonable steps to protect the Shared Data from misuse, loss and unauthorised access, modification or disclosure.
- g. The Data User will promptly notify the Data Provider in writing if it becomes aware of:
 - i. any loss or unauthorised use, access, modification or disclosure of the Shared Data,
 - ii. any inadvertent disclosure by an employee or agent of the Data User of Personal Information, Health Information, or information that is otherwise restricted or prohibited from being disclosed by law.

The Data User agrees to use all reasonable efforts to assist the Data Provider to contain, assess and respond to the circumstances listed in subclause i) and ii) above in a timely manner to mitigate any potential harm to affected persons or organisations.
- h. In addition, the Data User and Data Provider will promptly notify the Office of the Victorian Information Commissioner of incidents that compromise the confidentiality or integrity of the Shared Data, in a way that is consistent with their obligations under the Data Security Standards.

11. Retention and destruction of Shared Data

Once the purpose set out in Item 1 of the Data Sharing Schedule is fulfilled, the Data User will dispose of the Shared Data except where retention is required under the *Public Records Act 1973* (Vic), and in accordance with Item 7 of the Data Sharing Schedule.

12. Party Representatives

The representatives of the Data Provider and Data User for the purpose of any communications or notices under this Agreement are set out in Item 8 of the Data Sharing Schedule.

13. General

- a. This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.
- b. The Agreement is governed by and is to be construed in accordance with the laws of Victoria.

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Secretary, Department of

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Executed as an agreement.

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Secretary, Department of Health and Human
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Date:

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Secretary, Department of Premier and
Cabinet
Date:

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Secretary, Department of Education and
Training
Date: 1 September 2020

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Secretary, Department of Justice and
Community Safety
Date:

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SIGNED by KYM PEAKE for and on)
behalf of THE DEPARTMENT OF)
HEALTH AND HUMAN SERVICES:)
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Secretary, Department of Health and
Human Services
Date: 28 August 2020

SIGNED by CHRIS ECCLES AO, for)
and on behalf of THE DEPARTMENT)
OF PREMIER AND CABINET:)
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Secretary, Department of Premier
and Cabinet
Date:

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Associate Secretary, Department of
Jobs, Precincts and Regions
Date: 11 September 2020

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Secretary, Department of Transport
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Chief Commissioner, Victoria Police
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HEALTH AND HUMAN SERVICES:)

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Secretary, Department of Health
and Human Services

Date: _____

SIGNED by CHRIS ECCLES AO, for)
and on behalf of THE DEPARTMENT)
OF PREMIER AND CABINET:)

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Secretary, Department of Premier
and Cabinet

Date:28 August 2020.....

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EDUCATION AND TRAINING:)

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Secretary, Department of Education
and Training

Date: _____

SIGNED by REBECCA FALKINGHAM)
PSM for and on behalf of THE)
DEPARTMENT OF JUSTICE AND)
COMMUNITY SAFETY:)

Secretary, Department of Justice
and Community Safety

Date: _____

SIGNED by JOHN BRADLEY for and)
on behalf of THE DEPARTMENT OF)
ENVIRONMENT, LAND, WATER AND)
PLANNING:)

Secretary, Department of
Environment, Land, Water and
Planning

Date: _____

SIGNED by DAVID MARTINE PSM for)
and on behalf of THE DEPARTMENT)
OF TREASURY AND FINANCE:)



Secretary, Department of Treasury
and Finance

Date: _____1/9/2020_____

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Shane Patton APM
Chief Commissioner

Date:1/9/2020.....