3.1 Data Sharing Agreement

Note: General

This provides template clauses that organisations may refer to in relation to their contractual arrangements for data partnership. The template clauses should be adapted to suit organisations’ particular circumstances and needs and incorporated into a complete and effective contract. The template clauses should be adapted accordingly to their choice of jurisdictions. Use of these clauses does not mean that organisations will be in compliance with any laws or regulations. Organisations should seek professional legal advice on their legal position or obligations or to put in place contractual arrangements, including where using these template clauses.

Note: Data Sharing Agreement

This document is a template agreement designed to establish a framework of rules and restrictions applicable to a data sharing arrangement. It is designed to set out some of the key provisions necessary to set up a data sharing arrangement and may need to be supplemented with additional terms, as necessary in the circumstances.

This Agreement should be amended to reflect the specific requirements in the applicable jurisdiction to the data sharing. Clauses 16-24 in particular should be considered carefully for validity in the jurisdiction.

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Parties

Note: Parties

In a one-way bilateral sharing arrangement, one party will act as the Data Provider and the other as the Data Consumer. In a two-way bilateral sharing arrangement, each party will assume the role of both Data Provider and Data Consumer at different points, depending on when they are providing and receiving data.

Background

Note: Background

The Background sets out in plain English the background to the agreement and its purpose, along with the proposed roles of the parties. It serves as an interpretive guide to the remainder of the agreement and is a good place to set out any unusual features of the arrangement.

This Agreement does not cater for the transfer of Personal Data. Please refer to the *Guide to Data Sharing 2017* published by the Personal Data Protection Commission of Singapore.

1. [Party A] is in the business of [ ] and [Party B] is in the business of [ ].
2. The parties intend to share data for the purposes of [ ].
3. The parties acknowledge that the data the parties propose to share may be subject to regulation according to intellectual property laws, copyright in particular, or other regulations, such as relating to embargoes or restrictions on sharing business secrets or financial information.
4. The parties acknowledge that the data which the parties propose to share contains no Personal Data (as defined in Clause 1, below).

IT IS AGREED:

1. Definitions and Interpretation
	1. Definitions

|  |  |
| --- | --- |
| Confidential Information | Any Data or other information (in writing, electronic form or in any other form or media whatsoever) which is directly or indirectly disclosed by or on behalf either party on or after the date of this Agreement and which is confidential in nature, irrespective of whether it is marked as such. |
| Data | Any machine-readable code containing information that is deliberately disclosed by the Data Provider to the Data Consumer within the scope and course of this Agreement. |
| Data Provider Group  | Any legally independent entity that is affiliated to the Data Provider by means of [ ]. |
| Data Consumer Group | Any legally independent entity that is affiliated to the Data Consumer by means of [ ]. |
| Distribute | To make Data accessible (including the provision of access through a database or other application populated with the Data, re-selling, sub-licensing, transferring or disclosing the Data) by any means, including any electronic means, to any Data Consumer. |
| Fees | Has the meaning given to it in Clause 8.1. |
| Group | The Data Consumer Group and/or the Data Provider Group, as applicable in the context.  |
| Information Technology | Any electronic hardware (e.g. server, end-user devices) or software (e.g. e-mail clients, programs for data archiving or backups) used for the communication, storage or other form of processing of Data. |
| Initial Period  | A period of 12 months commencing on the date of this Agreement.  |
| Initial Term | Has the meaning given to it in Clause 14.1. |
| Insolvency Event | [to be defined in accordance with the laws of the relevant jurisdiction and the agreement between the parties] |
| Intellectual Property Rights | All patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. |
| IT Security Management System | Any defined standard issued by [authority/institution] that regulates the use of Information Technology and (non-technical) organisational measures each with the objectives of warranting the availability, integrity, confidentiality and authenticity of Data and related information, as well as the protection against internal and external risks to the afore-said protective goals. |
| Licence | Has the meaning given to it by Clause 5.1. |
| Losses  | All losses, liabilities, costs (including legal costs), charges, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction).  |
| Modify  | The right to adaption and transformation, i.e. the right to modify and/or edit the Data, and to subsequently publish such Data at will, namely by means of [method] and each for the purpose of [purpose]. |
| Permitted Use | The internal business use of the Data Consumer and the processing and exploitation of the Data for [commercial use [OR] non-commercial use]. |
| Personal Data | Data, whether true or not, about an individual who can be identified from that Data or from that Data and other information to which the organisation has or is likely to have access. |
| Records | Has the meaning given to it in Clause 13.1. |
| Term | The Initial Term together with any renewal terms in accordance with Clause 14.2. |

* 1. Interpretation

Note: Interpretation

This includes references to schedules, annexes and appendices which are not included in this template. If any such additional elements are included in the Data Sharing Agreement (for example, mandatory policies, technical specifications or personal data sharing annexe), this structure and taxonomy should be observed.

Item (xiii) below includes the option to cross reference collateral agreements. This is to ensure that where there is any inconsistency between two agreements in respect of the same subject matter, it is clear which agreement prevails. Examples could include pre-existing master or framework agreements, stand-alone confidentiality agreements, collaboration agreements or memoranda of understanding. Where non-binding agreements, such as non-binding memoranda of understanding are referenced in this Agreement, it may be more appropriate to reference these for information purposes only in the Background section.

(i) Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement; (ii) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (iii) any schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement; (iv) any reference to this Agreement includes the schedules; (v) any reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established; (v) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; (vi) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders; (vii) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision; (viii) a reference to writing or written includes faxes but not e-mail; (ix) references to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule; (x) any words following the terms “including”, “include”, “in particular” or “for example” or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

In the event and to the extent of any inconsistency between: (xi) any provision contained in the body of this Agreement and any provision contained in the schedules or appendices, the provision in the body of this Agreement shall prevail; (xii) the terms of any accompanying invoice or other documents annexed to this Agreement and any provision contained in the schedules or appendices, the provision contained in the schedules or appendices shall prevail; and (xiii) any of the provisions of this Agreement and the provisions of [ ], the provisions of this Agreement shall prevail.

1. Scope

Note: Scope

This includes a placeholder for the parties to specify the model of data sharing. For complex data transfers, the parties may wish to set out in an annexe the technical requirements for the transfer, along with any specific responsibilities of the parties and dependencies.

This should be read in conjunction with Clauses 3 (Obligations of the Data Provider) and 4 (Obligations of the Data Consumer), in particular, along with the accompanying notes.

* 1. The Data Provider shall make available the Data to the Data Consumer via [ ].
	2. The Data Consumer shall, at its own cost, ensure that it promptly complies with any minimum hardware configuration requirements specified by the Data Provider for the purpose of establishing connectivity required to make available the Data in accordance with Clause 2.1.
1. Obligations of the Data Provider

Note: Obligations of the Data Provider and Obligations of the Data Consumer

This should be read in conjunction with Clauses 2 (Scope), 9 (Warranties), 10 (Limitation of Liability), 11 (IT Security) and the accompanying Notes.

This is to set out clearly the obligations of the parties. If the data transfer is likely to be complex, the parties may have extensive responsibilities in respect of the technical transfer and the parties may rely on each other for certain dependencies.

* 1. The Data Provider is responsible for ensuring compliance with all applicable laws and other binding regulations in the process of providing the Data to the Data Consumer, and shall promptly notify the Data Consumer if it becomes aware of any circumstances which prevent or may prevent the provision of the Data as envisaged by this Agreement.
1. Obligations of the Data Consumer
	1. The Data Consumer shall appropriately support the Data Provider in the provision of the Data to the Data Consumer, including ensuring the full operation of Information Technology infrastructure and systems required for the agreed specifications regarding the quality of the Data, its transmission and reception.
	2. The Data Consumer is responsible for compliance of its processing and exploitation of the Data with all applicable laws and other binding regulations. Without limitation to this obligation, the Data Consumer undertakes to process and exploit the Data exclusively according to the terms and conditions agreed by the parties, and to promptly notify the Data Provider if any problems should arise which might preclude such processing and exploitation of the Data.
	3. The Data Consumer must inform the Data Provider of any imminent impairment of the Licence or other rights granted to the Data Consumer under this Agreement, in each case immediately after the Data Consumer becomes or should have become aware of it.
2. Grant of Licence

Note: Grant of Licence

This is the operative provision granting the Data Consumer the rights to use the data. It is important to tailor this clause carefully to reflect the specifics of the data sharing arrangement to ensure that the Data Consumer has the rights they need and the Data Provider does not give away more than intended.

This should be read in conjunction with the definition of Permitted Use, which determines rights to commercialise the Data, and Clauses 6 (Distribution, Sub-licensing and Authorised Users) and 7 (Licence Restrictions) which expand on who can use the licence and applicable restrictions.

The definition of Permitted Use makes reference to the business purposes of the Data Consumer. Where this is used as the licensing basis, the Data Provider should ensure that the nature of the business of the Data Consumer would not create a broader scope of licence than intended.

* 1. The Data Provider grants to the Data Consumer a non-exclusive, non-transferable, revocable, worldwide licence (“Licence”) for the Permitted Use only, during the Term, subject to the licence restrictions set out in Clause 7, to:
		1. access, view and Modify the Data;
		2. store the Data and any Modified Data;
		3. reproduce the Data; and
		4. Distribute the Data in accordance with Clause 6.
1. Distribution, Sub-licensing and Authorised Users

Note: Distribution, Sub-licensing and Authorised Users

This should be read in conjunction with Clause 5.1 and, in particular, the definition of Distribution.

This Clause should be tailored to reflect the parties' agreement as to the extent of data distribution, including any permitted sub-licensing.

Licences extending to Group Companies or large or unlimited numbers of users should be considered carefully. Monitoring use and enforcing the licence may be more challenging and pricing is likely to be more complex.

* 1. The rights granted pursuant to Clause 5.1 may be exercised by all legal representatives and employees of the Data Consumer and its authorised Group companies.
1. Licence Restrictions

Note: Licence Restrictions

This should be read in conjunction with Clauses 5.1, 4.1 and 6 and the definition of Permitted Use to ensure that any limitations to the rights of the Data Consumer to use the Data are captured correctly and the licence is sufficient for the intended purpose.

Certain categories of Data may require additional restrictions. For example, Data containing Personal Data.

* 1. The Data Consumer shall:
		1. only make copies of the Data to the extent reasonably necessary for the following purposes: the Permitted Use, back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing;
		2. not use the Data for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
		3. not extract, reutilise, use, exploit, redistribute, disseminate, copy or store the Data for any purpose not expressly permitted by this Agreement; and
		4. not do anything which may damage the reputation of the Data Provider or the Data, including by way of using the Data (wholly or in part) in any manner which is pornographic, racist or that incites religious hatred or violence.
1. Fees

Note: Fees

This should be read in conjunction with Clauses 5 (Grant of Licence), 6 (Distribution, Sub-licensing and Authorised Users) and 7 (Licence Restrictions) to ensure that the fee arrangement reflects the nature of the provision and use of the Data.

This provides for a one-off fee payment for supply of the Data, which accords with fairly broad permissions for the Data Consumer to use and develop the data, as set out in this Agreement. However, there are many ways to charge for use of data.

Whether the parties will have an ongoing relationship and the supply of data (and payment of fees) will be continuous or repeated will be a determining factor in the fee structure. The type of data will also be a material factor to take into consideration.

Clause 8.5 is favourable to the Data Provider and the parties may or may not wish to include it.

* 1. As a consideration for the Data Provider’s provision of the Data and the granting of licensed rights over the Data, the Data Consumer shall pay to the Data Provider a non-recurring fee amounting to [amount] (“Fees”).
	2. Payments shall be made in [currency] into an account specified by the Data Provider. All costs relating to the payment shall be borne by the Data Consumer.
	3. All Fees and prices specified herein are exclusive of applicable sales taxes.
	4. The Data Provider will invoice the Data Consumer the amounts due in accordance with applicable laws and other binding regulations.
	5. If the Data Consumer is in default in respect of any sum which is due, it shall pay default interest on the outstanding sum at an annual rate of [number]% above the base rate of [bank], calculated daily, until received by the Data Provider.
1. Warranties

Note: Warranties

The parties may include additional warranties depending on their respective roles. For example, if the Data Provider is responsible for the integrity of the data, the parties may wish to include a warranty that the data is virus free, along with a definition of ‘virus’. Similarly, if the Data Consumer does not have the opportunity to inspect and verify the data prior to the data sharing, the parties may wish to include Data Provider warranties on data defects and fitness for purpose.

This should be read in conjunction with Clauses 2 (Scope), 3 (Obligations of the Data Provider), 4 (Obligations of the Data Consumer) and 11 (IT Security), in particular, along with the accompanying Notes.

* 1. The Data Provider warrants that it has the right to license the receipt and use of the Data as specified in this Agreement.
	2. Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
	3. Without limiting the effect of Clause 9.2, the Data Provider does not warrant that:
		1. the supply of the Data or will be free from interruption;
		2. the Data is accurate, complete, reliable, secure, useful, fit for purpose or timely; or
		3. the Data has been tested for use by the Data Consumer or any third party or that the Data will be suitable for or be capable of being used by the Data Consumer or any third party.
1. Limitation of Liability

Note: Limitation of Liability

This sets out any liability exclusions and caps agreed between the parties and is key to the management of their risk. Depending on the allocation of data sharing responsibilities and the fees payable for the Data, the parties may wish to allocate responsibility for losses.

Depending on the applicable governing law and jurisdiction, any limitations or exclusions on liability may also have to satisfy rules on unfair contract terms to be valid (for example, the Unfair Contract Terms Act 1994 in Singapore).

Different jurisdictions have different rules on ‘remoteness’ of loss, ie, how a particular loss can be said to have been caused directly or indirectly by an action or event. If there are specific scenarios likely to give rise to a loss that the parties are aware of, it would be prudent to specify these in this Clause and agree on the appropriate allocation of liability in the event the scenario arose.

In most jurisdictions, certain types of liability cannot be excluded by law and any attempt to do so may invalidate the clause as a whole. The parties should also consider the impact of any warranties implied by applicable law in the relevant jurisdiction in relation to the data sharing.

This should be read in conjunction with Clauses 2 (Scope), 3 (Obligations of the Data Provider), 4 (Obligations of the Data Consumer) and 8 (Fees), in particular, along with the accompanying Notes.

Clauses 10.4.1 and 10.4.2 include placeholders for the parties to agree any absolute financial cap on liability and any cap based on a percentage of Fees paid or payable.

* 1. Neither party excludes or limits liability to the other party for:
		1. fraud or fraudulent misrepresentation;
		2. death or personal injury caused by negligence; or
		3. any matter in respect of which it would be unlawful for the parties to exclude liability.
	2. Subject to Clause 10.1, the Data Provider shall not 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:
		1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
		2. any loss or corruption (whether direct or indirect) of Data or information;
		3. any loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
		4. any loss or liability (whether direct or indirect) under or in relation to any other contract.
	3. Clause 10.2 shall not prevent claims, which fall within the scope of Clause 10.4, for:
		1. direct financial losses that are not excluded under any of the categories set out in Clause 10.2.1 to Clause 10.2.4; or
		2. tangible property or physical damage.
	4. Subject to Clause 10.1, the total aggregate liability of either party in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall in all circumstances be limited to the greater of:
		1. [amount]; and
		2. [number]% of the total Fees paid by the Data Consumer to the Data Provider during the 12-month period immediately before the date on which the cause of action first arose or, if the cause of actions arose during the Initial Period, paid or payable in respect of the Initial Period.
1. IT Security

Note: IT Security

This should be considered in conjunction with the definition of IT Security Management System.

Depending on the nature of the Data and the technical sharing arrangements, the parties may wish to specify further in this Clause how the Data must be kept secure.

If the parties include technical specifications, IT security, mandatory security policies or other schedules or annexes, these should be considered in conjunction with Clause 1.2 (Interpretation).

* 1. The parties each undertake to implement and, during the Term, continuously operate an IT Security Management System.
	2. If the Data Consumer becomes aware of any misuse of any Data, or any security breach in connection with this Agreement that could compromise the security or integrity of the Data or otherwise adversely affect the Data Provider, the Data Consumer shall, at the Data Consumer's expense, promptly notify the Data Provider and fully co-operate with the Data Provider to remedy the issue as soon as reasonably practicable.
1. Confidentiality

Note: Confidentiality

Additional confidentiality provisions may be required to cater for specific materials, information or samples provided as part of the data sharing process.

If the parties put in place a stand-alone confidentiality agreement, Clauses 20 (Entire Agreement) and 1.2 (Interpretation) should be amended to reflect the extent to which that confidentiality agreement should apply to the subject matter of this Agreement.

* 1. Each party undertakes that it shall not at any time and for a period of five (5) years following termination or expiry of this Agreement, disclose to any person any Confidential Information concerning the other party or the other party Group company, except as follows:
		1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement; or
		2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
	2. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
	3. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this Clause 12.
1. Audit

Note: Audit

Depending on the nature of the data sharing and the level of monitoring and enforcement required in the circumstances, the parties should provide for record keeping and audit obligations and procedures.

* 1. The Data Consumer shall keep, in paper and electronic form, at its normal place of business, detailed, accurate and up-to-date records (“Records”) sufficient to enable the Data Provider to verify the Data Consumer’s compliance, during the previous [three (3)] years, with the licence provisions as set out in Clauses 5, 6 and 7.
	2. The Data Consumer shall permit the Data Provider and its third party representatives (including its agents), during normal business hours and upon giving reasonable notice (except that no notice shall be required in case of any reasonably suspected breach of this Clause 5, 6 and 7, to inspect and take copies of the Records held by the Data Consumer.
	3. The audit rights set out in this Clause 13 shall continue for [three (3)] years after termination or expiry of this Agreement. The Data Consumer shall give all necessary assistance to the conduct of such audits during the Term and for a period of [three (3)] years after its termination or expiry.
1. Duration and Termination

Note: Duration and Termination

The duration of this Agreement and the circumstances under which the parties are entitled to terminate it should be considered carefully in the context of the data sharing arrangement and the laws of the relevant jurisdiction.

* 1. Unless otherwise terminated under this Clause 14, this Agreement shall take commence on the date of last signature, below, and shall continue for an initial term of [one (1) year] the (“Initial Term”).
	2. On expiry of the Initial Term, this Agreement shall automatically renew for further successive terms of [one year], unless either party gives the other party notice under Clause 14.3.
	3. This Agreement may be terminated by either party with immediate effect upon notice in writing to the other if:
		1. there is an Insolvency Event of the other party;
		2. the other party has committed a material breach of this Agreement, which is irremediable or which is capable of remedy and the other party has failed to remedy the breach within [thirty (30) days] of receipt of notice to do so; or
		3. the other party has committed a series of breaches of this Agreement which together constitute material breach.
	4. Upon termination of this Agreement, all rights to the Data granted to the Data Consumer hereunder shall revert to Data Provider, and the Data Consumer shall immediately refrain from any further processing or exploitation of the Data, destroy all physical copies, and irrevocably delete all electronic copies. At the request of the Data Provider, the Data Consumer must confirm fulfilment of these obligations in writing.
1. Announcements

No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

1. Variation
	1. No amendment, variation or waiver of this Agreement shall be valid unless in writing and duly executed by or on behalf of all the parties.
2. Governing Law and Jurisdiction

Note: Governing Law and Jurisdiction

This should be determined by the parties in accordance with the laws of the applicable jurisdiction.

The parties may wish to include alternative dispute resolution procedures for resolving disputes.

* 1. This Agreement shall be deemed to be made in [the Republic of Singapore], and shall be governed by and construed in accordance with the laws of [the Republic of Singapore]. The parties agree to submit to the exclusive jurisdiction of the courts of [the Republic of Singapore].
1. No Waiver
	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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
2. Assignment
	1. The Data Consumer shall not be entitled to assign, transfer, mortgage, charge, sub-contract, declare a trust of or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Data Provider (which is not to be unreasonably withheld or delayed).
3. Entire Agreement
	1. This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

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

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

1. Severability
	1. Each of the provisions of this Agreement is severable. If any provision or part-provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, the parties shall negotiate in good faith a suitable replacement provision, which, to the greatest extent possible, achieves the parties’ original commercial intentions.
2. Third party rights
	1. A person who is not a party to this Agreement has no rights, express or implied, to enforce or benefit from any term of this Agreement.
3. Notices
	1. Any notice, consent, waiver or other communication given under this Agreement must be in writing and may be delivered by hand or sent by pre-paid first class post or other next working day delivery service to the address of the other party specified at the beginning of this Agreement, or any other address notified from time to time by the parties.
4. Signatures

Note: Signatures

The signature block and particulars will be dependent on the type of corporate entity signing this Agreement, as well as the jurisdiction in which the data partners are based.