

DATA SHARING AGREEMENT PERTAINING TO THE SUPPLY OF CONFIDENTIAL XXX SURVEY DATA

Agreement between

THE HUMAN SCIENCES RESEARCH COUNCIL (HSRC)

A statutory body established in terms of the Human Sciences Research Council Act, No. 17 of 2008
("the HSRC")

Specifically, the HSRC's Centre for Science, Technology and Innovation Indicators ("CeSTII")

and

xxxxxx (name of contracting organisation)

("the DATA USER")

SCHEDULE

A) TITLE OF PROJECT:	AS SET OUT IN ANNEXURE "B"
B) DESCRIPTION OF PROJECT:	AS SET OUT IN ANNEXURE "B"
C) COMMENCEMENT DATE OF AGREEMENT:	UPON SIGNATURE OF THIS AGREEMENT BY PARTY SIGNING
D) PERIOD OF AGREEMENT:	
E) NAME AND DESIGNATION OF DATA USER COORDINATOR (CLAUSE 4):	
F) COPYRIGHT, OWNERSHIP AND PUBLICATION:	AS SET OUT IN ANNEXURE "D"

SIGNED BY OR ON BEHALF OF CeSTII (duly authorised)	SIGNED BY OR ON BEHALF OF THE DATA USER (duly authorised)
PLACE:	PLACE:
DATE:	DATE:
FULL NAMES:	FULL NAMES:
CAPACITY:	CAPACITY:
SIGNATURE:	SIGNATURE:
WITNESS:	WITNESS:
DOMICILIUM:	DOMICILIUM:
STREET ADDRESS:	STREET ADDRESS:

HSRC Board: Prof Mvuyo Tom (Chairperson), Prof Lindiwe Zungu, Ms Precious Sibiyi, Dr Abdalla Hamdok, Ms Nasima Badsha, Prof. Relebohile Moletsane, Advocate Roshan Dehal, Prof. Mark Bussin, Prof. Crain Soudien (CEO)

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TERMS OF AGREEMENT

1. PERIOD OF AGREEMENT

1.1 This Agreement shall come into effect on the Commencement Date set out in the Schedule above (“the Schedule”), notwithstanding the date of acceptance of any proposal by the DATA USER and notwithstanding the date on which the Parties sign this Agreement.

2. RESPONSIBILITIES OF CeSTII

2.2 The CeSTII Data Committee Chair will provide the individuals listed in Annexure “C” with the data requested as per the specifications set out in “Annexure B”.

2.3 No charge for the provision of this data is to be levied by CeSTII; that is, unless data requests are deemed by the CeSTII Data Committee to be of such an intricate or complex nature as to warrant a levy for recovering CeSTII personnel costs pertaining to the preparation of data, in which case a budget should be included in Annexure “B”.

3. RESPONSIBILITIES OF THE DATA USER

3.1 Disclosure of the data shall be restricted for the sole purpose(s) listed in Annexure “B”.

3.2 On receipt of the data, the DATA USER will report its knowledge of any individual who is the subject of the information to CeSTII as soon as possible, and will not use the data in such a way that damage or distress is or is likely to be caused to any individual who is the subject of the information.

3.3 On completion of the research or research dissemination project specified in Annexure “B”, all copies of the information supplied to the DATA USER by the CeSTII Data Committee are to be removed from the computer systems and storage devices, including cloud-based storage, of the DATA USER. The DATA USER may retain aggregate information on the proviso that it does not allow an individual claimant to be identified with reasonable effort.

4. COORDINATOR

4.1 The DATA USER undertakes to designate a professional officer as coordinator (hereinafter referred to as “the Coordinator”) to:

4.1.1 act as link between the DATA USER and the CeSTII Data Committee;

4.1.2 keep the CeSTII Data Committee informed of the activities of the DATA USER on intervals agreed to in Annexure “B”; as well as to,

4.1.3 submit to the CeSTII Data Committee the final publication on the research or research dissemination project.

5. CONFIDENTIALITY

5.1 The parties shall:

5.1.1 treat as strictly confidential and secret any and all information given or made known to them during the contract period.

5.1.2 keep all such information obtained secret towards third parties and only use it in cooperation with each other for the purpose expressly agreed upon by the parties and to disclose same to their employees only on the basis of the need to know;

5.1.3 accept responsibility for the observance of the secrecy undertaking contained in this agreement by their employees;

5.1.4 cause all of their employees who are directly or indirectly given access to the said proprietary and secret information to execute secrecy undertakings in a form acceptable to the parties in order to protect the parties against the unauthorized disclosure of such information to any third party and to fully co-operate in the enforcement of such secrecy undertakings.

5.2 The above undertakings shall not apply to: information contained in any final report issued by the DATA USER in accordance with Annexure "B" and "D".

6. BREACH AND TERMINATION

6.1 In the event of the DATA USER committing a material breach of any of the terms and conditions of this agreement, and remaining in default for a period of 7 (seven) days after receipt by it of written notice from the HSRC calling for such breach to be remedied, the HSRC shall be entitled, without prejudice to any other rights it may have in terms of this agreement or in law, to terminate this agreement by written notice to that effect given to the other party.

6.2 This agreement may at any time be terminated by the HSRC by giving not less than 3 (three) days written notice thereof to the DATA USER if the HSRC, in its sole discretion, decides to terminate this agreement.

6.3 Any termination of this agreement shall not absolve the DATA USER from the obligation to observe the confidentiality measures and other restraints as set out herein.

7. DOMICILIUM CITANDI ET EXECUTANDI

7.1 The Parties hereby choose and assign as *domicilia citandi et executandi* for the purpose of addressing correspondence and for serving notices and pleadings resulting from this Agreement, the addresses set out in the Schedule *supra* or as amended from time to time in writing.

7.2 Any notice to be given hereunder shall be given in writing and may be given either personally or may be sent by post, telex or facsimile and addressed to the relevant party at its *domicilium* or to such other address as shall be notified in writing by any of the parties to the other from time to time. Any notice given by post shall be deemed to have been served on the expiry of 7 (seven) working days after the same is posted by recorded delivery post or air mail. Any notice delivered personally or sent by telex or facsimile shall be deemed to have been served at the time of delivery or sending.

8. REPRESENTATIONS

8.1 No representations and/or guarantees of any nature (except the representations and/or guarantees expressly included in this Agreement) on account of which/upon which any of the Parties acts to his/her/its prejudice, will be taken into account in the exercising and enforcement of his/her rights.

8.2 The HSRC is not bound by any verbal agreement, statement or representation by any of its employees or representatives or any person purporting to act on behalf of the HSRC, unless subsequently reduced to writing and signed by both parties.

9. CESSION

9.1 No cession, delegation or any other transfer of rights or obligations by the DATA USER in terms of or on account of the Agreement will be valid unless the prior written consent of the CeSTII Team has been obtained.

10. GOVERNING LAW

10.1 The validity, construction and performance of this agreement shall be governed by and interpreted in accordance with the laws of South Africa.

11. ARBITRATION

11.1 All disputes will be referred to the North Gauteng High Court of South Africa, Pretoria (or any successor to that court).

HSRC Board: Prof Mvuyo Tom (Chairperson), Prof Lindiwe Zungu, Ms Precious Sibiya, Dr Abdalla Hamdok, Ms Nasima Badsha, Prof. Relebohile Moletsane, Advocate Roshan Dehal, Prof. Mark Bussin, Prof. Crain Soudien (CEO)

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11.2 Notwithstanding clause 20.1, the parties may agree to address any particular dispute by way of arbitration.

11.3 Such arbitration will be finally conducted by the single arbitrator appointed by the Arbitration Foundation of South Africa and will be conducted in accordance with the rules of the Arbitration Foundation of South Africa. The arbitration award of the arbitrator will be final and binding on the parties who hereby agree to give effect to the award. Either party will be entitled to have the arbitrator's award made an order of the court at the cost of the party requesting same.

11.4 In the event of a dispute, the parties will proceed to perform their obligations in terms of this agreement with due diligence pending resolution of the dispute.

12. ENTIRE AGREEMENT

12.1 This Agreement, together with the proposal, constitute the entire agreement between the parties and no party shall be bound by any undertaking, representation or warranty not recorded herein or added hereto as provided herein in accordance with clause 12.2 below.

12.2 No alteration, variation, addition or agreed cancellation of this agreement shall be of any force or effect unless reduced in writing and signed by both parties' duly authorized signatories

13. SIGNATORIES

13.1 In the event that a signatory signs in a representative capacity, then such signatory warrants he/she is duly authorised hereto.

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ANNEXURE “A”

Forms part of the Agreement dated **xxx** between the **HSRC** and the **DATA USER(S)** listed in Annexure “C”

DATA

The data to be supplied relate to:

xxx

The following items from the data will be extracted:

xxx

ANNEXURE “B”

Forms part of the Agreement dated **xxx** between the **HSRC** and the **DATA USER(S)** listed in Annexure “C”

RESEARCH DESIGN / OBJECTIVES / TIME LIMITS / ALL OTHER DETAILS INCLUDING ONLINE OR WEB PORTAL DISSEMINATION PLANS

ANNEXURE “C”

Forms part of the Agreement dated **xxx** between the **HSRC** and the **DATA USER(S)** listed in Annexure “C”

PROJECT STAFF (i.e. disclosure of the information shall be restricted to the following individuals):

xxx

ANNEXURE "D"

COPYRIGHT, OWNERSHIP AND PUBLICATION OF REPORTS

1. By accessing the data, the DATA USER gives assurance that:

1.1 The data and documentation will not be duplicated, redistributed or sold without prior approval from the CeSTII Data Committee and CeSTII Deputy-Executive Director;

1.2 The data will be used for statistical and scientific research purposes only and the confidentiality of individuals/organisations in the data will be preserved at all times and that no attempt will be made to obtain or derive information relating specifically to identifiable individuals/organisations;

1.3 The CeSTII Data Committee will be informed of any books, articles, conference papers, theses, dissertations, reports or other publications, including web-based publications or databases, resulting from work based in whole or in part on the data and documentation;

1.4 The HSRC and CeSTII will be acknowledged in all published and unpublished works, within the body text, in the reference list and in the acknowledgements section, based on the data and documentation using the following citation information, styled according to the referencing convention in use – *Centre for Science, Technology and Innovation Indicators (CeSTII). YEAR DATA PUBLISHED. NAME OF DATASET USED. Human Sciences Research Council: Pretoria. www.hsrc.ac.za;*

1.5 For archiving and bibliographic purposes, one copy of all reports and publications based on the requested data will be sent to the CeSTII Deputy Executive Director for onward forwarding to the CeSTII Data Committee;

2. Furthermore, the DATA USER warrants that:

2.1 The collector of the data, HSRC and CeSTII, and the relevant funding agencies bear no responsibility for use of the data or for interpretations or inferences based upon such uses; and,

2.2 The HSRC and CeSTII is the custodian of the data supplied to the DATA USER as part of this Agreement.

3. By retrieval of the data you signify your agreement to comply with the above-stated terms and conditions and give your assurance that the use of statistical data obtained from the CeSTII will conform to widely-accepted standards of practice and legal restrictions that are intended to protect the confidentiality of respondents.

4. Failure to comply with the above is considered infringement of the intellectual property rights and other relevant policies of the HSRC.

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