



Isle of Man
Government

Reilrys Ellan Vannin

DATA SHARING AGREEMENT

Between

Cabinet Office, a Department of the Isle of Man Government

and

Kate Brunner KC of Albion Chambers, Broad Street Bristol BS1 1DR

**Agreement for sharing Shared Personal Data within
the provisions of the Applicable Data Protection Legislation**



Attorney General's Chambers

THIS AGREEMENT is made this _____ day of _____ 2023
("Commencement Date")

BETWEEN

1. **Cabinet Office** (a Department of the Isle of Man Government), of Third Floor, Government Office, Bucks Road, Douglas, Isle of Man, IM1 3PN ("the Cabinet Office");
2. **Kate Brunner KC** of Albion Chambers, Broad Street Bristol BS1 1DR (the "Chair")

(the Cabinet Office and the Chair, together being referred to in this agreement as the "Parties")

RECITALS

- (A) The Cabinet Office on behalf of the Council of Ministers has engaged the Chair to conduct an independent review within the Terms of Reference (the "Engagement"), including setting methodology, gathering and evaluating evidence, researching, preparation, delivery and presentation of a report (the "Report") in respect of the Isle of Man Government's handling of the Coronavirus pandemic during the period between December 2019 to April 2022 (the "Review").
- (B) In connection with the Chair's Engagement, the Parties wish to enter into this data sharing agreement (the "Agreement").
- (C) The Cabinet Office enters into this Agreement on behalf of the Council of Ministers, due to arrangements made under paragraph (A) above for the Engagement.
- (D) This Agreement is intended to ensure that data sharing between the Parties occurs in accordance with the provisions of the Applicable Data Protection Legislation.

1. Definitions

The following terms shall have the following meanings:

"the Agreement"	has the meaning given to it in Recital (B) above and incorporates the Conditions;
"Applicable Data Protection Legislation"	(i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; and (ii) to the extent the IOM GDPR applies, the law of the Isle of Man which relates to the protection of Personal Data;

"the Conditions"	means the conditions attached to this Agreement;
"Data Subject"	has the meaning given to it in the Applicable Data Protection Legislation;
"Data Subject Rights Request"	means the exercise by a Data Subject of their rights under the Applicable Data Protection Legislation;
"the EU GDPR"	the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law;
"the IOM GDPR"	the EU GDPR as implemented into the domestic law of the Isle of Man (as amended) the Data Protection (Application of GDPR) Order 2018;
"Information Commissioner"	has the meaning given to it in the in the Applicable Data Protection Legislation;
"Personal Data"	has the meaning given to it in the Applicable Data Protection Legislation;
"the Principles"	means the data protection principles set out in the Applicable Data Protection Legislation;
"Personal Data Breach"	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;
"Personnel"	means the employees, temporary staff, contractors, sub-contractors or other persons employed or engaged, as applicable, by or on behalf of each of the Parties (as appropriate) who have access to or who potentially have access to Personal Data;
"Supervisory Authority"	the relevant supervisory authority in the territories where the parties to this Agreement are established (other than the Information Commissioner);
"Shared Personal Data"	the Personal Data to be shared between the Parties under paragraph 4 of the Conditions, including but not limited to, Personal Data made available on the Platform (defined below) and other cloud storage applications as well as communications between the Parties;
"Terms of Reference"	the Review's terms of reference, titled ' <i>Independent Review into the Isle of Man Government's handling of the Coronavirus pandemic</i> ', and as may be updated from time to time (GD 2022/0033 as amended by GD 2022/0087);

"Review Team"	means the Review team (other than the Chair), consisting of: Alex West ('Counsel to the Review'), Paul Fletcher ('Operations Director'), Kingsley Napley ('Legal Advisors'), Dame Mary Ney ('Expert Advisor') and Dr Mike Gill ('Expert Advisor'), and any other party appointed by the Chair to the Review team and notified to the Cabinet Office in writing, from time to time;
"the Term"	has the meaning given to it in clause 5.1 below; and
"the UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Unless otherwise specified, definitions used in this Agreement shall be definitions in the Applicable Data Protection Legislation as applicable to each of the Parties from time to time during the Term.

2. Purpose

- 2.1. This Agreement sets out the framework for the sharing of Shared Personal Data when the Cabinet Office, on behalf of the Council of Ministers, discloses Personal Data to **the Chair or the Review Team** for one or more of the Agreed Purposes. It defines the principles and procedures that the Cabinet Office and the Chair shall adhere to and the responsibilities the Parties owe to each other.
- 2.2. The Parties consider that the sharing of Shared Personal Data is necessary in order for the Chair to carry out her responsibilities and services set out in the Engagement and for the Parties to meet their respective obligations under Applicable Data Protection Legislation and the Engagement.
- 2.3. The Parties agree that data sharing will take place for the following purposes (the **Agreed Purposes**), the Cabinet Office shall make available to the Chair such Shared Personal Data as is reasonably required by the Chair in order:
 - 2.3.1. for the Chair to carry out her services in connection with her Engagement and as set out in paragraph 2 'Data Sharing Purposes' in the Conditions; and
 - 2.3.2. for the Cabinet Office to share such Shared Personal Data with the Chair as the Chair considers necessary for the purposes of the Chair meeting her obligations in connection with the conduct of her Review.

3. Compliance with Applicable Data Protection Legislation

- 3.1. The Parties are each acting as an independent Controller in respect of the Processing activities set out in this Agreement.

- 3.2. Subject to clause 3.1, each Party shall comply and be able to demonstrate its compliance with the requirements applicable to them in respect of its Applicable Data Protection Legislation obligations during the Term of this Agreement.
- 3.3. The Cabinet Office will facilitate the sharing of information which is required for the purposes of the Engagement in the Review, from Government Departments and Statutory Boards, pursuant to a direction made under the Government Departments Act 1987 and the Statutory Boards Act 1987 ("the Direction") on 23 December 2022. The Cabinet Office will enter into separate sharing arrangements with each Department and Statutory Board in order to ensure data protection compliance with the Applicable Data Protection Legislation.
- 3.4. The Direction provides the legal powers and lawful basis for the Council of Ministers to seek the information, including personal data, from Government Departments and Statutory Boards.
- 3.5. The Direction requires that Government Departments and Statutory Boards provide information and assistance to the Chair, and/or the Review Team, on for the purposes of the Engagement and the Review.

4. The Agreement

- 4.1. The Parties undertake with each other to:
 - a) Implement and comply with the provisions of this Agreement within their respective organisations and conduct of the Review, as applicable.
 - b) Comply with the Conditions and use this Agreement (as applicable to each of the Parties) to facilitate the transfer of Shared Personal Data between the Parties.

5. Review of the Agreement

- 5.1. This Agreement shall continue for such period as is required to enable the transfer of Shared Personal Data between each of the Parties or for such periods as one Party holds Shared Personal Data provided to it by the other Party (whichever is the later) and shall automatically terminate on the expiry/termination (as applicable) of the Chair's Engagement in respect of the Review ("**the Term**").
- 5.2. The consent of every party under this Agreement is required in order to add any additional party to this Agreement. In the event that a Party terminates its involvement in this Agreement or a new party joins the Agreement, an amended and updated version of this Agreement will be drafted as soon as practicable and circulated to all other parties.
- 5.3. If required, the Parties shall on mutual agreement instigate a review of this Agreement during the Term to ensure the effectiveness of this data sharing initiative within the conduct of the Chair's Review.

6. Indemnity

- 6.1. The Cabinet Office shall indemnify on demand and keep the Chair indemnified on demand, from and against any and all liabilities, costs (including without limitation, the cost of any time spent or time lost by the Chair court costs and reasonable professional costs and expenses), charges, damages, fines, expenses or loss of any kind suffered or incurred by the Chair arising from or in connection with any complaint, review, claim, action, request, inquest, investigation or demand brought by any person, Data Subject, Information Commissioner or Supervisory Authority as a result of any breach or alleged breach by the Cabinet Office or their agents of: (a) any Applicable Data Protection Legislation; and/or (b) any of the provisions of this Agreement.
- 6.2. The Cabinet Office shall indemnify on demand and keep the Review Team indemnified on demand, from and against any and all liabilities, costs (including without limitation, the cost of any time spent or time lost by the Review Team, court costs and reasonable professional costs and expenses), charges, damages, fines, expenses or loss of any kind suffered or incurred by the Review Team arising from or in connection with any complaint, review, claim, action, request, inquest, investigation or demand brought by any person, Data Subject, Information Commissioner or Supervisory Authority as a result of any breach or alleged breach by the Cabinet Office (on behalf of Council of Ministers) or their agents of: (a) any Applicable Data Protection Legislation; and/or (b) any of the provisions of this Agreement.
- 6.3. The sum total of all the Cabinet Office's indemnity obligations under clause 6.2 to the Review Team when aggregated shall not exceed the amount of GBP250,000 (two hundred and fifty thousand pounds).

7. Limitation of liability

- 7.1. Neither the Cabinet Office nor the Chair excludes or limits liability to the other for any matter for which it would be unlawful for the parties to exclude liability.
- 7.2. Subject to clause 7.1:
- 7.2.1. the Chair shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, loss of business opportunity, loss of wasted expenditure, loss of reputation, depletion of goodwill and/or similar losses, pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges, fines or expenses however arising under or in connection with this Agreement; and

7.2.2. the Chair's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising under or in connection with this Agreement howsoever arising (including the performance or contemplated performance of this Agreement) shall be limited to £250,000.

8. GENERAL

8.1. **Survival.** On termination or expiry of this Agreement howsoever arising, the following clauses shall continue in full force: clause 6 and clause 7.

8.2. **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

8.3. **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

8.4. **Notices.** Any notice given to the Parties under or in connection with this Agreement shall be in writing and shall be: (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

a) **Cabinet Office:** louise.quayle@gov.im.

b) **The Chair:** chair@covidreview.im.

Any notice shall be deemed to have been received: (i) if delivered by hand, at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting; or (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

8.5. **Third Party Rights.** Other than the Review Team in respect of clause 6, no other person who is not a party to this Agreement shall have any rights under this Agreement to enforce any term of this Agreement. The rights of the Parties to terminate, rescind or vary this Agreement are not subject to the consent of any other person.

8.6. **Governing Law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual

disputes or claims) shall be governed by and construed in accordance with the laws of the Isle of Man.

8.7. **Jurisdiction.** Each party irrevocably agrees that the courts of the Isle of Man shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

9. Signature

By signing this Agreement, the signatories accept responsibility for its execution and agree to adhere to its provisions. This Agreement has been entered into on the Commencement Date as stated at the beginning of it.

Signed on behalf of **the Cabinet Office:**



Position: Interim Chief Secretary

Date: 3 January 2023

Signed by Kate Brunner KC

.....
Kate Brunner KC

Date:

THE CONDITIONS

1. The following named persons are responsible for ensuring that the Principles are adhered to on behalf of the Parties:

Name	Job Title	Applicable Party	Telephone Number
Kate Brunner, KC	Chair of the Review	Chair of the Review	[REDACTED]
Caldric Randall	Chief Secretary (Isle of Man Government)	Cabinet Office (on behalf of the Council of Ministers)	[REDACTED]

1.1 The following named persons shall be the Parties as applicable, single point of contact ("Data Sharing Contact") who will work together to reach agreement with regard to any issues arising from this Agreement and to actively improve the effectiveness of data sharing between the Parties. The responsibilities of the Data Sharing Contact may be delegated to other persons within the Isle of Man Government on behalf of the Cabinet Office, or to other members within the Review Team in respect of the Chair, subject to notifying the other party in writing as soon as reasonably practicable.

Name	Job Title	Applicable Party	Telephone Number
Louise Quayle	Project Coordinator	Cabinet Office (stationed at DHA)	Email only available
Alex West	Counsel to the Review	Chair of the Review	[REDACTED]

1.3 Either Party may change the person or details contained in this Condition by giving notice in writing to the other Party in accordance with clause 8.4 above.

1.4 Each Party shall be responsible for obtaining their own expert advice with regard to data protection issues.

2. Purposes of sharing Personal Data

- 2.1. The purpose for Personal Data sharing between the Parties under the terms of this Agreement is for the following purposes:
- a) For the bringing of this Agreement into effect.
 - b) For the discharge of each Party's applicable responsibilities under this Agreement and the Engagement.
 - c) For monitoring compliance with the terms of this Agreement.
 - d) For the conduct and carrying out of the Engagement for the purposes of the Review within the Terms of Reference, including gathering evidence, researching, preparation, delivery and presentation of the Report in respect of the Review.

3. Lawful, Fair and Transparent Processing

- 3.1. Each Party shall ensure that it Processes the Shared Personal Data fairly and lawfully in accordance with this Agreement during the Term.
- 3.2. Each Party shall ensure that it has lawful bases in place to enable the lawful sharing of the Shared Personal Data under the Applicable Data Protection Legislation.
- 3.3. The Cabinet Office shall, in respect of Shared Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Applicable Data Protection Legislation, of the purposes for which it will process their Personal Data, the valid legal basis for such purposes and such other information as is required by the Applicable Data Protection Legislation including:
- 3.3.1. if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer; and
 - 3.3.2. if Shared Personal Data will be transferred outside the United Kingdom or Isle of Man, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the Controller to enable the Data Subject to understand the purpose and risks of such transfer.
- 3.4. The Parties are each responsible for providing their own privacy notices in respect of their Processing of the Shared Personal Data.

4. Shared Personal Data

- 4.1. Subject to the provisions of this paragraph 4, where it has been determined necessary reasonable and proportionate to do so, Shared Personal Data may be shared between the Parties for the Agreed Purposes during the Term.

- 4.2. Generally, Special Categories of Personal Data and Criminal Offence Data will not be shared between the Parties. In the event such categories of Shared Personal Data are shared between the Parties, such data will be anonymised by the Cabinet Office to the extent practicable and with appropriate redactions where required and will be documented on a case by case basis between the Parties as required from time to time.
- 4.3. Further detail on the access and processing restrictions in respect of the Shared Personal Data by the Chair be set out in the Chair's relevant Review policies which will be notified to the Cabinet Office in writing where relevant to the provision of information to the Review Team.
- 4.4. On all occasions the minimum necessary Shared Personal Data will be shared.

5. Consent as a basis for sharing

- 5.1. Each Party acknowledges and agrees that consent of relevant Data Subjects to enable lawful transfer of the Shared Personal Data to the Chair for the Agreed Purposes will only be relied upon in exceptional circumstances. Subject to paragraph 3.2, if the lawful basis relied on is consent, Shared Personal Data may be shared if consent to share has been given by the Data Subject. This should be sought if it is safe, appropriate and feasible to do so.
- 5.2. Where the Data Subject does not have capacity to give consent to share, consent may be sought from someone who may appropriately act on behalf of the Data Subject.

6. Data Subjects' rights requests:

- 6.1. The Parties each agree to provide such assistance as is reasonably required to enable the other Party to comply with Data Subject Rights Requests under the Applicable Data Protection Legislation within the time limits imposed by the Applicable Data Protection Legislation.
- 6.2. The Data Sharing Contacts are responsible for maintaining appropriate records of Subject Rights Requests, the decisions made and any information that was exchanged.

7. Data Quality Standards

- 7.1. The Parties will ensure that only relevant and proportionate amount of Shared Personal Data necessary will be shared by the Parties.

- 7.2. Each Party will ensure the Shared Personal Data is adequate, and limited to what is necessary in relation to the Agreed Purpose that all information processed by it is (and remains) accurate and up to date.

8. Security

- 8.1. The Parties will establish appropriate policies and procedures establishing measures to ensure adequate protection of all Shared Personal Data from accidental or intentional disclosure to unauthorised persons, deletion or modification, theft or damage, having due regard for the principles and standards of the Applicable Data Protection Legislation as are appropriate.
- 8.2. In accordance with paragraph 8.1, the Cabinet Office has established an electronic documents and records management platform consisting of two databases (together referred to as the "Platform") as follows: (i) a database, to which the IoM Government Covid Review Project Team (acting on behalf of the Cabinet Office) and the Government Departments and Statutory Boards directed by it under the Direction, will have access to (the "IoM Government Materials Database"); and (ii) a second database, in which the Chair and the applicable members of the Review Team shall have sole access to (the "Chair's Database") to the exclusion of the IoM Government Covid Review Project Team and any other Government Department or Statutory Board.

The access and permissions of the Cabinet Office and its Data Sharing Contacts to the IoM Government Materials Database is restricted, with limited access granted solely for the purpose of uploading, organising and redacting information. Only the IoM Government Covid Review Project Team shall have rights or permissions to transfer copies of material from the IoM Government Materials Database to the Chair's Database, for the purposes of the Engagement and the Review. For the avoidance of doubt, the IoM Government Covid Review Project Team shall have no rights or permissions to access the Chair's Database, to monitor the use of the Chair's Database, to gather any information about the use of the Chair's Database, or to view, download or copy any materials therein.

- 8.3. Any policies and procedures will be made available to the other Party upon reasonable request.
- 8.4. Personnel must receive appropriate training.

9. Sharing of Policies and Procedures

Both Parties must have appropriate governance and risk assessment measures in place, to assure the safe storage, access and utilisation of Shared Personal Data. Policies and procedures will be available for inspection subject to reasonable request and advance written notice.

10. Review, Retention and Disposal

- 10.1. The Parties undertake to: ensure that Shared Personal Data will only be used for the specific Agreed Purposes for which it was shared; keep Shared Personal Data securely stored and dispose of it securely when it is no longer required in accordance with each of their applicable policies. Notwithstanding the foregoing, the Parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and / or industry.
- 10.2. All Personnel, as applicable, shall be made aware of their applicable Party's policy, for the storage and disposal of Shared Personal Data and if required, shall be appropriately trained on how to follow that policy.
- 10.3. Subject to this paragraph 10, the Parties shall dispose of Shared Personal Data, to the extent relevant, as follows:
- In respect of Shared Personal Data stored within cloud storage applications, the Parties shall delete such Shared Personal Data in accordance with their applicable cloud storage policies;
 - In respect of Shared Personal Data that is not stored within cloud storage applications that:
 - all software and data is erased from redundant hardware and media storage (e.g. tapes, disks) before the hardware is removed and
 - confidential paper waste is shredded or is collected and held in a secure area prior to shredding or incinerating.

11. Breaches and Complaints

- 11.1. In the event of a dispute, complaint or claim brought by a Data Subject or the Information Commissioner or a Supervisory Authority concerning the processing of Shared Personal Data against a Party, the applicable Party will inform the other Party about any such disputes, complaints or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 11.2. The Parties shall each comply with their obligation to report a Personal Data Breach to the Information Commissioner or appropriate Supervisory Authority and (where applicable) Data Subjects under the Applicable Data Protection Legislation and shall each inform the other Parties of any Shared Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner or any Supervisory Authority or Data Subject(s).

- 11.3. The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Shared Personal Data breach or complaint in an expeditious and compliant manner.
- 11.4. Subject to paragraph 11.1, 11.2 and 11.3, and the applicable Parties' policies, material breaches of this Agreement must otherwise be dealt with by the signatory under their own established policies and procedures.
- 11.5. The Parties have established their own policies to cover security breaches including how breaches of security will be logged and investigated and how adherence to such policies will be monitored. If applicable and required, these policies may be reviewed on a regular basis.

12. Confidentiality and permitted use and disclosure

- 12.1. So far as the Chair includes information or material shared by the Cabinet Office within the Report or any material published alongside the Report, the Chair will clearly set out where such materials and information are not in the original form in which disclosed to the Chair.
- 12.2. Relevant Personnel shall be required in their applicable employment contracts/contracts of engagement to maintain confidentiality of all the applicable Parties and the Data Subjects confidential information shared between the Parties not marked for formal dissemination in respect of the Review. This restriction does not apply to: (a) any use or disclosure authorised by the other Party or required by law, regulation, any court of competent jurisdiction or any regulatory, judicial, governmental or similar body, provided that in respect of the latter, to the extent the applicable Party is legally permitted to do so, such Party gives the Chair as much notice of such disclosure as possible and takes into account the reasonable requests of the Chair in relation to the content of such disclosure; (b) any information which is already in, or comes into, the public domain otherwise than through the other Party's unauthorised disclosure; and (c) for the avoidance of doubt, the final publishable form of the Report and any material published in its final form alongside the Report. Subject to the foregoing, failure to otherwise maintain confidentiality may be considered as a breach hereunder and policies and procedures of each party should make it clear of the consequences of a breach.
- 12.3. For the avoidance of doubt, the Chair is permitted without restriction to share all applicable confidential information with any/all members of her Review Team and as otherwise required in connection with the conduct of the Chair's Review as well as to other applicable professional advisors, consultants or contractors who are engaged to advise the Chair ("Advisors"). The Chair shall ensure that such Advisors to whom she discloses confidential information to, comply with substantially similar confidentiality obligations to paragraph 12.2 or are otherwise subject to professional

obligations of confidentiality and the need for such disclosures to remain reasonable, proportionate and in compliance with the Applicable Data Protection Legislation.

- 12.4. Subject to paragraph 12.2 above, the Parties shall not either during the Term of this Agreement or at any time after the date of termination of this Agreement, use or disclose to any third party (and shall use their best endeavours to prevent the publication and disclosure of) any confidential information concerning the conduct of the Review as well as the communications shared between the Parties not marked for formal dissemination in respect of the Review.
- 12.5. Subject to the Chair's obligations within the Terms of Reference and permitted disclosure to her Advisors (to the extent required), the Chair agrees with the Cabinet Office that any confidential information expressly identified by the Cabinet Office (or by one of the Government Departments or Statutory Boards providing information to the Review Team under the Direction) as being of a highly sensitive nature shall not be publicly disclosed by the Chair without first consulting with the relevant party providing that information.
- 12.6. 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 and in respect of the Chair, her Engagement and the conduct of her Review.

