

Guide to Confidentiality Contract Clause

Standard Clauses for Health Services

The following clauses have been developed to assist health services to strengthen and clarify contractual requirements in relation to HealthShare Victoria.

It is recommended that health services have their legal department or advisors review the clauses and incorporate into their contract templates.

The confidentiality, privacy and data protection clauses were extracted from the HSV standard agreement templates which have been developed by HSV and Health Legal. The clauses may be added to health services' contract/agreement templates to provide assurance of legal protection when sharing data with HSV and other health services or government agencies.

Refer to HealthShare Victoria for confidentiality, privacy and data protection clauses for inclusion in a collective agreement.

Definitions

Code of Practice means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014 (Vic)*.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Organisation including any information designated by the Organisation as confidential, which is disclosed, made available, communicated or delivered to the Contractor in connection with this Agreement, but excludes information:

- a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- b) which the Contractor can demonstrate was in its possession prior to the date of this Agreement;
- c) which the Contractor can demonstrate was independently developed by the Contractor;
- d) which is lawfully obtained by the Contractor from another person entitled to disclose such information; or
- e) which is disclosed pursuant to legal requirement or order or pursuant to this Agreement.

Information Privacy Principles means the information privacy principles set out in the *Privacy and Data Protection Act 2014 (Vic)*.

Organisation means the entity entering into this Agreement as defined in (refer to the section of the agreement template that has details of your health service or other contracting or legal entity).

Protective Data Security Standard means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014 (Vic)*.

1. Confidentiality, privacy and data protection

Note: Ensure reference number is updated in clauses 1.1(d) and 1.6 to align with your contract clause numbers.

1.1. Use of Confidential Information

- a) The Contractor must (and must ensure that its employees, agents and advisers will):
 - i. use and reproduce Confidential Information only to perform its obligations under this Agreement; and
 - ii. not disclose or otherwise make available Confidential Information other than to personnel who have a need to know the information to enable the Contractor to perform its obligations under this Agreement.
- b) All Confidential Information will remain the property of the Organisation and all copies or other records containing the Confidential Information (or any part of it) must be returned by the Contractor to the Organisation on termination or expiry of this Agreement
- c) The Contractor accepts that the Organisation is required to supply data and information to HealthShare Victoria about their current pricing and usage volume, pursuant to legislation. The Contractor unconditionally waives any rights that would prevent this supply from taking place and undertakes to desist from any action to enforce such rights.
- d) The Contractor acknowledges that the Organisation will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Contractor of this <clause 1> and without the need on the part of the Organisation to prove any special damage.

1.2. Disclosure

The Contractor hereby acknowledges and/or consents to:

- a) the Organisation providing any information which the Organisation has obtained from the Contractor pursuant to the Invitation to Supply, the Offer and/or this Agreement (including financial information) to third parties for the purposes of benchmarking, monitoring, comparison or evaluation of:
 - i. contracts of this type; or
 - ii. the purchase of the Goods,

with the Organisation taking reasonable steps (in its opinion) to keep such information confidential (including requiring the relevant third party to sign a confidentiality agreement) (*include reference to confidentiality agreement only if contractor demands it*).

- b) the Organisation (or such other public sector agency as may, from time to time, be responsible for doing so) publishing, whether on the internet or otherwise, all such information as is necessary to comply with the requirements of HSV Purchasing Policies;
- c) the Organisation making available all information requested to HealthShare Victoria;
- d) the Organisation making available to the Victorian Auditor-General all information that is requested by the Auditor-General;
- e) the Organisation making available all information in relation to the Contractor or this Agreement as may be required to comply with its obligations under the *Freedom of Information Act 1982 (Vic)*;
- f) the Organisation making available, Confidential Information to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or sub-committee;
- g) the Organisation making available, Confidential Information to any agency, authority, instrumentality, Minister or officer of the State to whom it is customary for the Organisation to disclose the Confidential Information (whether or not the Organisation are legally obliged to do so);
- h) only being able to make public announcement in relation to this Agreement with express prior written consent of the Organisation.

1.3. Non-disclosure of patient information

The Contractor shall ensure that its employees or agents are made aware and comply with the provisions of section 141 of the *Health Services Act 1988 (Vic)* and section 346 of the *Mental Health Act 2014 (Vic)* (where relevant) which relate to the unlawful disclosure of patient information.

1.4. Contractor Privacy

The Contractor acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor under or in connection with this Agreement or any Purchase Order Contract in the same way and to the same extent as the State or the Organisation would have been bound had it been directly done or engaged in by the State or the Organisation.

1.5. Data protection

The Contractor acknowledges that it will be bound by the Protective Data Security Standards and will not do any act or engage in any practice that contravenes a Protective Data Security Standard in respect of any data collected, held, used, managed, disclosed or transferred by the Contractor, on behalf of the Organisation, under or in connection with this Agreement.

1.6. Indemnity

The Contractor indemnifies the Organisation in respect of any loss, liability or expense suffered or incurred by the Organisation out of or in connection with a breach of the Contractor's obligations under *<clause 1>*, except to the extent that the loss, liability or expense is directly caused by a negligent or wrongful act or omission of the Organisation or any of its officers or employees.

More information

Related documents and templates are available on the HSV website.

Disclaimer

The information presented in this document is general in nature and based on HealthShare Victoria's interpretation of the *Health Services Act 1988 (Vic)* and any ancillary legislation and regulations in effect at the time and should not be relied upon as legal advice. Please consider seeking professional and independent advice from your legal representative as to the applicability and suitability of this information and the legislation to your own business needs or circumstances.