**BSA SUBMISSION
ON THE
NATIONAL DATA GOVERNANCE FRAMEWORK POLICY**

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Ministry of Electronics and Information Technology
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June 10, 2022

Dear Madam,

Subject: BSA Submission on the National Data Governance Framework Policy

BSA | The Software Alliance (**BSA**)[1] appreciates the opportunity to submit comments on the draft National Data Governance Framework Policy (**Revised Policy**) to the Ministry of Electronics and Information Technology (**MeitY**).[2]

BSA is the leading advocate for the global software industry before governments and in the international marketplace. We have extensive experience engaging with governments around the world to promote effective, internationally interoperable legal systems that protect personal information and provide strong consumer rights while supporting responsible uses of data-driven technologies.

At the outset, we commend the MeitY for acknowledging and addressing some of BSA's concerns with the previous draft, titled the India Data Accessibility and Use Policy (**Previous Draft**).[3] We also appreciate the focus on continuing stakeholder consultations. While government-generated data can serve as a powerful engine for enabling innovation and economic growth, certain technical, legal, and organizational challenges can create complications that impede these outcomes. Given that our members are global leaders in the development of data-driven products and services, we are uniquely positioned to identify such challenges and offer recommendations that ensure data is used in ways that meet the Government's objectives to promote innovation and economic growth, while ensuring respect for the public's expectations of privacy, security, and ethical practices. Specifically, we thank the MeitY for:

- Sharpening the focus on personal data protection and privacy in the Revised Policy; and

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[1] BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Atlassian, Autodesk, Aveva, Bentley Systems, Box, Cisco, CNC/Mastercam, Dassault, DocuSign, Dropbox, IBM, Informatica, Intel, MathWorks, Microsoft, Nikon, Okta, Oracle, PTC, Rockwell, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

[2] National Data Governance Framework, accessible at: https://www.meity.gov.in/writereaddata/files/National%20Data%20Governance%20Framework%20Policy_26%20May%202022.pdf.

[3] MeitY India Data Accessibility and Use Policy, accessible at: https://www.meity.gov.in/writereaddata/files/India%20Data%20Accessibility%20and%20Use%20Policy.pdf

- Noting that all rules, standards, and protocols for enabling data sharing under the Revised Policy must be formulated after due stakeholder consultations.

At the same time, new concerns have emerged in the Revised Policy, such as the prioritization of domestic companies for access to data. Also, certain positive aspects of the Previous Draft — including establishing an open by default approach, protecting intellectual property rights, encouraging the use of anonymization tools, and ensuring equitable access to government data — have been removed in the Revised Policy. In addition, several of our recommendations to the Previous Draft have not been acknowledged. We discuss these along with our concerns and recommendations, below:

1. Ensure equitable access to government data

The Revised Policy notes that the Indian Data Management Office (**IDMO**) — which will oversee the implementation of the Revised Policy — will develop "rules to provide data on priority/exclusively to Indian/India based requesting entities."[4] We seek clarity on the intention of this provision and whether it is intended to impose a country-of-origin limitation on companies that will be permitted to access data under the National Data Governance Framework. To the extent the provision is intended to prevent companies headquartered outside of India from participating in the open data ecosystem, such an approach will undermine the Revised Policy's objective to "enable and catalyze vibrant AI and Data led research and Start-up ecosystem, by creating a large repository of Indian datasets."[5] Making data assets available to all stakeholders — on an equitable basis — will lead to private sector innovation that delivers these outcomes. Collaboration around government data can unlock opportunities that spark the economy and fuel job growth in virtually every industry sector. But a restrictive approach, in which certain companies are favored over others or even excluded, will curtail opportunities for collaboration with stakeholders both within India and around the globe, including in critical areas such as research and development that are key to economic growth and innovation.

Data has very little inherent value in raw form or in isolation. Businesses may use the data differently, subjecting it to various forms of processing with different objectives — all of which generate different value and use cases for the data. A restrictive approach, favoring certain companies over others, will disallow activities that could add significant value to the Indian economy.

2. Establish an 'open-by-default' approach

The Previous Draft aimed to promote the availability of non-sensitive government data by establishing an "open by default" policy, under which ministries and departments would need to classify data resources as "open," "restricted," or "negative list".[6] According to the proposed approach in the Previous Draft, datasets deemed "open" would be made open by default while data deemed "restricted" would be shared only through a prescribed process with trusted users. Datasets that are under the "negative list" would not be shared at all. BSA supports this approach, and requests that it be reinstated into the Revised Policy. We also recommend that the Revised Policy provide government departments with clear guidance on how to appropriately determine whether data assets should be categorized as open, restricted, or negative. The Revised Policy should also provide incentives for government departments to make non-sensitive public sector data available by default. This could include providing guidance on appropriate protections and limitations of liability for

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[4] Para 6.8, National Data Governance Framework.

[5] Para 2.2, National Data Governance Framework.

[6] Para 7, India Data Accessibility and Use Policy.

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government ministries and departments that share non-sensitive and restricted datasets in good faith, and guidance on adopting standardized data sharing agreements.

3. Reinstate data sharing principles: Intellectual property protections, security, and privacy

The Previous Draft highlighted certain important data sharing and governance principles, including recognition of privacy and security by design and intellectual property and ownership rights over data.[7] These principles should be reinstated into the Revised Policy. Further, MeitY should clarify that these principles are to be taken into consideration in determining the classification of datasets. Consistent with our earlier recommendation, the IDMO should be directed to develop guidance for departments and ministries to make dataset classification decisions. The basis of this guidance should be built from the data sharing principles listed in the Previous Draft.

4. Promote privacy enhancing technologies

Unlike the Previous Draft, the Revised Policy does not refer to anonymization tools. The Revised Policy does however note that the IDMO will establish anonymization standards and also guidance on anonymization mechanisms.[8] While this approach is welcome — we also encourage MeitY to provide guidance and resources to ministries and departments to help them leverage "privacy enhancing technologies" as part of the Revised Policy. This will help meet the Policy's objective to promote safety and trust. Emerging technologies like homomorphic encryption, differential privacy techniques, and federated machine learning can create opportunities for data sharing while preserving individual privacy.

5. Ensure active industry participation in the IDMO

The Revised Policy makes alternations to the institutional framework set out under the Previous Draft. The Revised Policy aims to set up the IDMO which

- will be responsible for managing the "India Datasets" program — that will process requests and provide access to data to different requesting entities — as well as lay down rules and standards on data handling and sharing.
- will prescribe implementation strategies and data sharing toolkits for stakeholders.
- will ensure active industry consultation before developing any standards.[9]

While we commend this approach, the Revised Policy does not contemplate a clear or explicit advisory role for the private sector. This is concerning, since identifying the data assets that will be valuable to the private sector can prove difficult without collaborative input from stakeholders outside of government. We recommend that the Revised Policy establish a public-private advisory council to provide recommendations to the IDMO about the types of data and data sets that will be most impactful to the public, industry, and government.

In addition, the IDMO will be empowered to establish anonymization standards. This may conflict with the with guidance from the Data Protection Authority (**DPA**) to be established under the Personal Data Protection Bill (**PDP Bill**). Given that the PDP Bill already grants the DPA the authority to develop standards of anonymization and de-identification, MeitY should ensure that the IDMO consults with the DPA and other relevant regulators before developing such standards. We also

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[7] Para 5.12, India Data Accessibility and Use Policy.

[8] Para 6.5, 6.17, National Data Governance Framework.

[9] Para 5.2, National Data Governance Framework.

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appreciate that the IDMO will be tasked to ensure industry consultations before it issues such standards.

6. Modernize IT infrastructure to support data sharing

We commend MeitY's focus on enhancing digital governance and appreciate that building "digital government" goals and capacity is one of the Revised Policy's key objectives.[10] Similar to our submission on the Previous Draft, we want to emphasize that the ability to deliver on MeitY's vision to leverage government data for enhancing digital governance will ultimately depend on whether government ministries and departments have the resources and infrastructure they need to make effective use of data.

Reliance on aging IT infrastructure and outdated applications can result in data siloes that prevent departments from accessing and using external data and make it exceedingly difficult to share data in usable formats with other government agencies and the public. MeitY should support improved implementation of the Revised Policy by promoting efforts to modernize the government's IT infrastructure through the adoption of commercial cloud offerings and best-in-class software solutions. In this regard, BSA strongly encourages public procurement policies that establish an environment of certainty for companies to drive increased investments in developing the best software solutions.[11] The procurement of software products and services should be based on their technical merits, product quality, functionality, and efficacy, regardless of where such products and services are developed or manufactured.

Thank you again for the opportunity to comment on the Revised Policy. If you require further information in respect of this submission, please contact Mr. Venkatesh Krishnamoorthy at venkateshk@bsa.org.

Sincerely,

BSA | The Software Alliance

Annexure: BSA Open Data Agenda

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[10] Para 2.3, National Data Governance Framework.

[11] Para 2, Streamlining the existing policy for software procurement, BSA Submission on the draft India Digital Ecosystem Architecture 2.0 (InDEA 2.0)

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Open Data: Bridging the Data Divide

From climate change to global health pandemics, tackling today's most pressing challenges will require data-driven responses. BSA's Open Data Agenda will enhance the collective benefits of data by advancing responsible policies that facilitate greater sharing, collaboration, and experimentation with data resources while protecting privacy. To that end, BSA will partner with policymakers, public interest organizations, and other interested stakeholders to:

1 Promote Effective Government Data Sharing

2 Promote Greater Industry Data Sharing

3 Promote Privacy Enhancing Technologies and Data Governance Structures

1 Promote Effective Government Data Sharing

Government-generated data is an important asset that can serve as a powerful engine for creating new jobs, promoting economic growth, and enabling innovation. At the state and federal level, agencies collect and generate vast quantities of data that offer unique insights into virtually every facet of the modern world, from satellite imagery that can help predict the weather to transportation data that can help reduce congestion. The OPEN Government Data Act, the Federal Data Strategy, and the American AI Initiative each seek to maximize the availability of non-sensitive government data for use by the public. To fully deliver on this vision, the BSA will support efforts to:

» **Create a Federal Commission to Enhance Open Government Data:** Prioritizing the release of high-value government data assets is an important objective. However, identifying the particular data assets that would be most valuable to the private sector has proven difficult. On the one hand, it is difficult for government to predict industry's specific data needs. On the other, it is difficult for industry to request access to data assets that they may not know exist. To resolve this impasse, BSA supports the creation of a federal commission that would bring together experts from the government, industry, academic, and public interest communities to examine: (1) what government data assets would be

most useful for industry, academic researchers, and the public, (2) what data assets the government has that are currently being underutilized, and (3) ways to make such data assets available for R&D uses while ensuring that privacy is protected if they include personal information. The commission should also (4) identify opportunities for agencies to make better use of technologies, such as APIs, to provide access to real-time data, (5) and recommend data collection, data governance, and data licensing practices to enhance the usability and interoperability of future data assets.

» **Appoint a Federal Chief Data Officer:** Ensuring that data is collected, maintained, and shared in ways that maximize its value is a complex task that requires dedicated senior leadership. The OPEN Government Data Act empowers each agency to appoint a Chief Data Officer (CDO) to oversee data governance and ensure that data resources can be leveraged across departments. Although agency CDOs will help maximize the value of data within each individual agency, ensuring whole-of-government interoperability will require a consistent approach to data governance. BSA therefore supports the appointment of a Federal Chief Data Officer to oversee the development of a common data architecture across government networks.

» **Advocate for State Open Government Data Laws:**
Many states and municipal governments have already embraced the opportunities that arise when non-sensitive data is made open by default. Those that have not should be encouraged to do so. BSA will work with states to promote open data legislation similar to the OPEN Government Data Act.

» **Enhance Interoperability of Government Data:**
Ensuring that government data is available for use is an important first step. But leveraging multiple streams of data to generate new insights is where real value is generated. Promoting interoperable approaches to data governance across the states is therefore a critical long-term objective. BSA encourages federal agency and state CDOs to collaborate on shared approaches to data governance.

» **Support Open Data Trade Commitments:**
Developing solutions to today's most pressing global challenges will require international cooperation on data access considerations. As an integral component of the digital economy, trade agreements should include commitments that facilitate access to and use of non-sensitive government data.

2 Promote Greater Industry Data Sharing

Although there is increasing recognition of the collective benefits that data sharing produces, the establishment of collaborative data sharing arrangements can be impeded by multiple technical, legal, and organizational challenges. BSA will work with stakeholders to diagnose these impediments and provide recommendations for overcoming them. In creating these recommendations, BSA will seek to:

» **Protect Competition and Enhance Privacy:**
To promote more robust data industry data sharing, BSA will support an expedited review process to enable regulators to enable relevant authorities to review and clear data sharing arrangements, consistent with competition and privacy considerations.

» **Promote the Development of Data Sharing Tools and Best Practices:** BSA supports the development, availability, and adoption of tools and best practices that make it easier and less expensive to share data in ways that are consistent with rigorous privacy expectations. Technical tools, such as application programming interfaces (APIs), can facilitate data exchanges that are faster and more secure than traditional transfers and create opportunities

64% of business executives polled in a recent MIT global survey pointed to a lack of regulatory certainty as a deterrent to voluntary data sharing.

Source: MIT Technology Review, *The Global AI Agenda: Promise, Reality, and a Future of Data Sharing* (March 26, 2020), available at https://bit.ly/GlobalAIagendaPDFENG

for empowering the public with greater access to their own data. Much as the development of standardized open source licenses gave rise to a new model for software innovation, standardized data license agreements can facilitate new collaborative approaches for sharing data resources.

» **Share Computing and Data Resources:**
Many opportunities exist to bridge the gap between organizations that produce data and the technology companies that develop cutting-edge data analytics tools and platforms. BSA will support public-private partnerships and other incentives for voluntary sharing initiatives that unlock the collective benefits of data.

3 Promote Privacy Enhancing Technologies and Data Governance Structures

Emerging technologies and data governance structures can enable value-added uses of data without compromising the confidentiality of the underlying data. BSA supports policies and initiatives that:

» **Leverage Emerging Technologies to Enhance Privacy:** A range of emerging technologies, including differential privacy, homomorphic encryption, and federated machine learning, create opportunities for sharing data while preserving individual privacy. These technologies can be used to maximize both the value and the confidentiality of sensitive information.

» **Enhance Opportunities for Data Collaboration:**
BSA supports the development of innovative data governance structures—such as data trusts, data cooperatives, and data commons—that facilitate public and private sharing of data in ways that preserve privacy while enabling participants to benefit from the analysis of potentially sensitive data. Investments in R&D and the creation of regulatory sandboxes can help spur the development of such arrangements.