

# Terms and conditions for the provision of aggregated or summary data for the purposes of research

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Research and Evaluation Branch

Policy, Advice and Research Division

[ndis.gov.au](https://www.ndis.gov.au)

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# Purpose

The sample Agreement below provides an example of the terms and conditions for supply of tailored NDIS data. The terms and conditions would apply on the basis that your organisation has completed and submitted an '[External Research Request Form – Short Version](#)' for aggregated data which has been appropriately considered and approved by the NDIA.

# Introduction

If the NDIA agrees to supply you with the requested NDIS data, your organisation will be required to enter into an Agreement on the terms and conditions substantially in the form of the terms and conditions in the sample Agreement below prior to any NDIS data being released. The Agreement would be based on the '[External Research Request Form – Short Version](#)' submitted by your organisation.

Please note, the terms and conditions in the sample Agreement may be amended in the final Agreement as required.

# Sample Agreement on the provision of aggregated or summary data

**NATIONAL DISABILITY INSURANCE AGENCY**

**(ABN 25 617 475 104)**

**AND**

**[INSERT NAME]**

**(ABN [INSERT ABN])**

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**Agreement on the provision of aggregated or summary data to [insert external party's name] for the research project titled [insert name of research project]**

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**THIS RESEARCH AGREEMENT** is made on the date it is executed by the last Party to sign.

**PARTIES:**

**NATIONAL DISABILITY INSURANCE AGENCY (ABN 25 617 475 104) OF 13-19 MALOP ST, GEELONG VIC 3220 IN THE STATE OF VICTORIA ("THE NDIA")**

**AND**

**[insert name], (ABN [insert ABN]) OF [insert physical address] ("[INSERT SHORT FORM NAME]")**

## **INTRODUCTION**

- [insert short form name] is conducting a research project titled [insert research project name].
- [insert short form name] lodged an external research request form with the NDIA for the provision of certain aggregated or summary data.
- The Parties have agreed to work on the Research Project in accordance with the terms and conditions set out in this Agreement.

## Operative provisions

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the contrary intention appears:

**Agreement** means this Agreement, including any schedules and annexures and as may be amended from time to time in accordance with its terms;

**Authorised Representative** means the nominated personnel of each Party as set out in Item 5 of the Schedule;

**Background Intellectual Property** means all Intellectual Property Rights owned by a Party as at the Commencement Date of the Research Project or developed or created by a Party after that Commencement Date but independently to and separately from this Agreement, which are made available for the conduct of the Research Project, including (a) subsisting in Background Materials; and (b) as set out in Item 4 of the Schedule;

**Background Material** means all material owned by a Party as at the Commencement Date of the Research Project or developed or created by a Party after that Commencement Date but independently or separately from this Agreement, which are made available for the conduct of the Research Project;

**Note to drafters: Alternate definition, to be used if the other party is a university:**

**Business Day** means in relation to anything that needs to be done or received, a day not being a Saturday, Sunday or declared public holiday in Melbourne or a holiday of the University and as published in the University's academic calendar from time to time;

**Business Day** means in relation to anything that needs to be done or received, a day not being a Saturday, Sunday or declared public holiday in Melbourne;

**Commencement Date** means the date set out in Item 2 of the Schedule;

**Commercialisation** in relation to Intellectual Property, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, incorporating that Intellectual Property, or to license or assign Intellectual Property to any third party to do any of those things;

**Commonwealth Record** has the meaning given in section 3 of the Archives Act 1983 (Cth);

**Confidential Information** means information that is by its nature regarded in Law as confidential, and includes information that is:

- (a) Personal Information (including Personal Information relating to NDIA Personnel or NDIS participants or providers);
- (b) Protected Agency Information;

- (c) designated by a Party as confidential;
- (d) specified in this Agreement as confidential;
- (e) agreed in writing by the Parties as confidential; or
- (f) known to be, or ought to be known to be, confidential by a Party,

but does not include information that is, or becomes, public knowledge other than by breach of this Agreement or any other confidentiality obligation. For clarity, any material or data the NDIA provides to [insert short form name] in order for [insert short form name] to conduct the Research Project is the NDIA's Confidential information (unless the NDIA agrees otherwise in writing);

**Eligible Data Breach** has the meaning given in section 6(1) of the Privacy Act;

**End Date** is the date set out in Item 3 of the Schedule;

**GST** means the Goods and Services Tax payable under a GST Law;

**GST Law** means the same as in A New Tax System (Goods and Services Tax) Act 1999 (Cth), and any regulations made pursuant to that Act;

**Intellectual Property Rights** means statutory and other proprietary rights in respect of trademarks, patents, circuit layouts, copyright, confidential information and all other rights with respect to intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967;

**Law** includes:

- (a) any law in force applying to the Research Project or this Agreement;
- (b) the common law and equity;
- (c) any statute, act of Parliament, proclamation, regulation, rule, by-law, ordinance, subordinate legislation or other regulatory measures; and
- (d) any certificate, licence, permit, authorisation, accreditation, code of practice, code of conduct or other requirement which is issued under an instrument referred to in paragraph (c);

**Moral Rights** means the rights in Part IX of the Copyright Act 1968 (Cth), including the right of attribution, the right against false attribution and the right of integrity;

**NDIS Act** means the National Disability Insurance Scheme Act 2013 (Cth);

**Party** means a party to this Agreement, its successors and permitted assigns and persons for whom it is responsible;

**Personal Information** has the meaning given in section 6(1) of the Privacy Act;

**Personnel** means, in relation to a Party, any natural persons who are employees, officers, agents, contractors or professional advisers of that Party. In the case of [insert short form name], Personnel includes students.

**Privacy Act** means the Privacy Act 1988 (Cth);

**Protected Agency Information** has the meaning given in section 9 of NDIS Act;

**Protocol** means the document identified in Annexure A which describes the objective(s), design, methodology, statistical considerations and organisation of the Research Project, as amended from time to time and most recently approved;

**Research Project** means the research project identified in Item 1 of the Schedule.

**Research Project IP** means any Intellectual Property created, invented or discovered in carrying out the Research Project including the Research Project Results but does not include Background IP or copyright in a student's thesis or other material produced by him/her for the purpose of assessment towards his/her degree;

**Research Project Results** means all data and results of the Research Project including, without limitation, processes, formulae, reports, software, designs, and research data produced in the conduct of the Research Project and all Intellectual Property Rights therein;

**Responsible HREC** means the Human Research Ethics Committee reviewing the Research Project as set out in Item 1 of the Schedule;

**Schedule** means a schedule to this Agreement;

**[Optional] Student** means the student identified in [insert cross reference];

**Term** has the meaning set out in clause 2.1;

**Relevant Disability Laws** means all Laws, regulations, rules, charters and standards related to the involvement or engagement of persons with disabilities in an employment context including the following:

- (a) National Disability Agreement;
- (b) NDIS Act;
- (c) Disability Discrimination Act 1992 (Cth) and related legislation;
- (d) Disability Services Act 1986 (Cth) and related legislation;
- (e) Equal Employment Opportunity legislation including the Workplace Gender Equality Act 2012 (Cth);
- (f) Workplace Health and Safety Act 2011 (Cth);
- (g) Fair Work Act 2009 (Cth);
- (h) Other applicable State and Territory legislation including the Human Rights Act 2004 (ACT) and the Charter of Human Rights and Responsibilities Act 2006 (Vic); and
- (i) Public Service Act 1999 (Cth) and related legislation.

1.2 In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) a reference to an individual, person, corporation, trust, partnership, unincorporated body or other entity includes any of them or any other legal person;



- (d) reference to a Party includes that Party's employees and agents;
- (e) a reference to a clause or schedule is a reference to a clause of, or a schedule to, this Agreement;
- (f) references to the words "**include**" or "**including**" are to be construed without limitation;
- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) reference to an "**agreement**" or "**document**" is to the agreement or document as amended, replaced or otherwise varied;
- (j) a reference to writing includes reference to printing, typing and other methods of producing words in a tangible and permanently visible form;
- (k) if a word or expression is given a meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (l) headings are for convenience only and do not affect interpretation;
- (m) the recitals form part of this Agreement; and
- (n) this Agreement is not to be construed to the disadvantage of a Party because that Party was responsible for its preparation.

1.3 In the event of any conflict or inconsistency the following order of precedence shall apply (in descending priority):

- (a) the terms and conditions of the clauses of this Agreement; and
- (b) the Schedule.

## 2. TERM OF THIS AGREEMENT

2.1 This Agreement commences on the Commencement Date and shall be ongoing until the End Date unless terminated earlier (Term).

## 3. CONDUCT OF THE RESEARCH PROJECT

3.1 [insert short form name] agrees to conduct the Research Project in accordance with this Agreement.

3.2 [insert short form name] shall use all reasonable endeavours to carry out the Research Project to a high standard and follow the Australian Code for the Responsible Conduct of Research (<https://nhmrc.gov.au/about-us/publications/australian-code-responsible-conduct-research-2018>) and the National Statement on Ethical Conduct in Human Research (<https://nhmrc.gov.au/about-us/publications/national-statement-ethical-conduct-human-research-2007-updated-2018>).

3.3 [insert short form name] must ensure that all necessary ethical, administrative and governmental approvals relating to the Research Project are in place before

commencing the Research Project and provide these approvals to the NDIA upon request.

## **4. RESEARCH PROJECT SUPPLIES**

- 4.1 To the extent that is authorised under the NDIS Act to do so, the NDIA shall supply in a timely and diligent manner all data necessary to fulfil its responsibilities under this Agreement and for the purpose of the Research Project.
- 4.2 In undertaking the Research Project, [insert short form name] must ensure that it obtains and/or uses Background Material in accordance with all applicable laws, regulations, policies guidelines and codes of conduct (including any applicable ethical approvals).

## **5. MEETINGS AND REPORTING**

- 5.1 [OPTIONAL, retained if meetings required.] The Parties will hold meetings (at least as set out in Item 7 of the Schedule) and as requested to update the other on progress of the Research Project.
- 5.2 [insert short form name] will deliver a final report to the NDIA. The final report will be compiled and signed off as set out in Item 7 of the Schedule prior to the End Date or such later date as agreed by the Parties.

## **6. RESEARCH PROJECT RESULTS AND RESEARCH PROJECT IP**

- 6.1 The Parties agree that all rights, title and interest in the Research Project IP will be owned solely by [insert short form name].
- 6.2 [OPTIONAL. This clause is to be retained only when a student is conducting the Research Project] The Parties agree that copyright in a student thesis will be owned by the student but [insert short form name] will ensure that the student enters into a written agreement with [insert short form name] which is consistent with this Agreement and the terms of this clause 6 before the student commences any Research Project activities.
- 6.3 [insert short form name] grants to the NDIA a non-exclusive, perpetual, irrevocable, fee-free and royalty free worldwide licence to use, copy, modify and communicate the Research Project IP for any purpose.
- 6.4 [insert short form name] will obtain any Moral Rights consents in writing necessary for the NDIA to use Background Material or Research Project IP that [insert short form name] provides to the NDIA for any purpose.

## 7. BACKGROUND IP

- 7.1 The Parties agree that the ownership of Background IP is not affected by this Agreement and that all Background IP remains the property of the Party that makes it available for the purpose of carrying out the Research Project.
- 7.2 No representations or warranties are made or given in relation to Background IP, however, each Party making available Background IP must ensure, such Background IP when used in accordance with this Agreement will not infringe any third-party Intellectual Property rights.
- 7.3 Each Party:
- (a) agrees that it will not have any claim, ownership or interest in the other Party's Background IP; and
  - (b) grants the other Party a non-exclusive, irrevocable, fee-free and royalty-free, worldwide licence for the use of any Background IP made available by the granting Party for the purpose of carrying out the Research Project only.

## 8. CONFIDENTIALITY AND PUBLICATION

### Confidential Information

- 8.1 Other than information available in the public domain, [insert short form name] agrees not to disclose to any person, other than the NDIA, any Confidential Information relating to the Agreement or the Research Project, without prior written approval from the NDIA. This obligation will not be breached where [insert short form name] is required by law or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).
- 8.2 The NDIA may at any time require [insert short form name] to arrange for its employees, or student to give a written undertaking relating to nondisclosure of the NDIA's Confidential Information in a form acceptable to the NDIA.
- 8.3 The NDIA will keep any information in connection with the Agreement confidential to the extent it has agreed in writing to keep such specified information confidential. The NDIA will not be in breach of any confidentiality agreement if the NDIA is required to disclose the information by law, a Minister or a House or Committee of Parliament.
- 8.4 Each Party must use all reasonable endeavours to ensure that its representatives comply with the obligations of confidentiality imposed upon it under this clause 8 as if those representatives were bound in the same way.
- 8.5 Each Party must advise each other Party as soon as reasonably practical of any breach of any confidentiality obligations under this Agreement of which it becomes aware.

## Publication

- 8.6 A Party may publish the Research Project IP (Publisher), subject to it complying with the following:
- (a) [OPTIONAL] prior to any submission for publication, the Publisher must offer the other Party (Non-Publisher) authorship, if the Non-Publisher's contribution meets the criteria specified by the National Health and Medical Research (NHMRC) 2019 guidelines, as amended from time to time;
  - (b) [OPTIONAL] prior to any publication, the Publisher must provide the Non-Publisher with a copy of the proposed publication (Publication) at least 30 days before it is submitted for publication;
  - (c) [OPTIONAL] the Non-Publisher must notify the Publisher whether permission to publish has been granted or refused within 30 days of the request (or such other period as may be set out at Item 7 of the Schedule) (Period);
  - (d) the Non-Publisher may provide feedback or input for the Publisher's consideration for inclusion prior to submission for publication. This right does not alter the time specified for permission or refusal in clause 8.6(c);
  - (e) any delay to publication requested by the other Party must not exceed 60 days. If the Non-Publisher does not respond to the request to publish within 30 days, consent to the Publication will be deemed to be given; and
  - (f) [OPTIONAL, retain if clause 8.6(c) is retained] the Non-Publisher may only refuse a request to publish if, in that Party's reasonable opinion, the publication is likely to jeopardise:
    - (i) the protection of Research Project IP (as applicable);
    - (ii) the successful commercialisation of the Research Project IP by the Party with such rights;
    - (iii) the Non-Publisher's Confidential Information;
    - (iv) the Non-Publisher's reputation; or
    - (v) compliance with Laws, including the Privacy Act or NDIS Act; or
    - (vi) the authorship of Non-Publisher's contributing staff is not recognised in accordance with clause 8.6(a).
- 8.7 All publications will recognise the contribution by both Parties to the Research Project.
- 8.8 The Publisher must obtain the Non-Publisher's written approval and consent to use the Non-Publisher's logo.
- 8.9 The parties are committed to the dissemination of research findings in accordance with the National Statement on Ethical Conduct in Human Research (2018), as amended from time to time, in order to make a contribution to knowledge or practice or to serve a public good.
- 8.10 [Optional, only retain if the Research Project is conducted by a student] The Parties acknowledge that where a student who is actively involved in the Research Project requires the Research Project IP to be published, in whole or in part, as part of their thesis for the award of a degree, that:

- (a) ownership of copyright in a thesis authored by the student is owned by the relevant student;
- (b) the thesis may be distributed to the student's examiners, on a confidential basis; and
- (c) unless otherwise agreed in accordance with clause 8.6, [insert short form name] may deposit in [insert short form name]'s library (in electronic or printed form) a copy of the Student's completed thesis or work submitted for a higher degree.

8.11 Each Party's obligations under this clause 8 shall survive termination or expiration of this Agreement.

## 9. LIABILITY AND INSURANCE

- 9.1 [insert short form name] will indemnify the NDIA and its employees, officers or agents against any claim, loss or damage arising in connection with any negligent or wilful breach of [insert short form name]'s obligations or representations under this Agreement.
- 9.2 [insert short form name]'s obligation to indemnify the NDIA and its employees, officers and agents will reduce proportionally to the extent that any act or omission, on the part of the NDIA or its employees, officers or agents contributed to the claim, loss or damage.
- 9.3 [insert short form name] will maintain adequate insurances for the Agreement and provide the NDIA with proof when reasonably requested.

## 10. DEFAULT AND TERMINATION

- 10.1 Without limiting either of the Party's rights under this Agreement, at Law or otherwise, a Party (First Party) may by notice immediately terminate this Agreement if the other Party (Breaching Party):
  - (a) commits a material breach of this Agreement and, where such breach is capable of remedy, fails, within 14 days after receipt of written notice, to remedy such breach; or
  - (b) is guilty of any wilful misconduct or wilful neglect in the discharge of its duties under this Agreement and fails to remedy this misconduct or neglect within [insert suitable timeframe] days after receiving notice of the wilful misconduct or wilful neglect from the NDIA; or
  - (c) subject to the Breaching Party complying with any requirements in the Corporations Act 2001 (Cth), seeks relief under any bankruptcy or insolvency law or is the subject of liquidation or winding up proceedings, receivership, bankruptcy or similar, other than for the purpose of and followed by a reconstruction, amalgamation or re-organisation.

- 10.2 Upon receipt of a notice of termination the Breaching Party must:
- (a) stop work as specified in the notice;
  - (b) take all available steps to minimise loss resulting from that termination and to protect the First Party's Confidential Information;
  - (c) return to the First Party or destroy, as directed by the First Party, any documents originating from the First Party which embody any First Party Confidential Information and must not keep any copies in any form, with the exception of one copy of same, which may be retained in safe custody (as may be specified by the First Party) for insurance and record purposes only; and
  - (d) upon request certify that any documents not returned to the First Party have been destroyed in accordance with clause 10.2(c).
- 10.3 Without limiting any other rights or remedies the NDIA may have, the NDIA may terminate this Agreement for any reason, by giving [insert short form name] at least [insert suitable number of days noting period of research project] days' notice by email. In this case, the NDIA will not be liable for any loss of profit or any other loss, damage, cost or expense in connection with the Agreement or its termination.

## 11. NOTICES

- 11.1 Any notice, demand, approval, direction, offer, consent, agreement, specification, request, statement or other communication (Notice) required to be given or made under this Agreement must be:
- (a) in writing, in English;
  - (b) sent by a person duly authorised by the sender; and
  - (c) will be deemed duly given or made if delivered or sent in writing by prepaid post or email to the Party's Authorised Representative.
- 11.2 Any Notice will be deemed to have been received by the Party to which it was sent:
- (a) in the case of hand delivery, upon the date of such delivery;
  - (b) in the case of prepaid post within Australia, on the fourth day following the date of dispatch; or
  - (c) in the case of email transmission, at the time of transmission, provided that, following the transmission, the sender does not receive a notification that the email has not been successfully delivered or the recipient informs sender (and can prove) that it has not received the entire Notice,
- but if the result is that a Notice would be taken to be given or made on a day which is not a Business Day or is later than 4:00 pm (local time), it will be taken to have been duly given or made at 10.00 am on the next Business Day.

- 11.3 Either Party may change its Authorised Representative, address, or email address for the purposes of this Agreement and/or for a Research Project by giving Notice of such change to the other Party.

## 12. DISPUTE RESOLUTION

- 12.1 All disputes or differences in relation to this Agreement or its subject matter (Dispute) shall be resolved in accordance with this clause 12.
- 12.2 Upon one Party giving notice of a Dispute arising between the Parties, the Parties agree to negotiate in good faith to resolve the Dispute and will refer resolution of the Dispute to their Authorised Representatives, or their nominees. If the Dispute has not been resolved by negotiation within 14 days or any other period of time agreed by the Parties, either Party may refer the Dispute to mediation and, subject to clause 12.4, will do so before initiating proceedings in a court to resolve the Dispute.
- 12.3 A Dispute which is referred to mediation will be referred to the Australian Disputes Centre (ADC) and be conducted in accordance with the [ADC Guidelines for Commercial Mediation 2019](#) under the relevant rules in Victoria with the proceedings being in English, and
- (a) if the Dispute has not been resolved within 60 days of referral pursuant to this clause 12.3 any Party to the Dispute may initiate proceedings in a court;
  - (b) any documents produced for the mediation are to be kept confidential and cannot be used except for the purpose of settling the Dispute;
  - (c) each Party must bear its own costs of resolving a Dispute under this clause 12.3; and
  - (d) the Parties must bear equally the costs of the mediator.
- 12.4 Nothing in this clause 12 will prevent a Party from seeking interlocutory relief through courts of appropriate jurisdiction.

## 13. COMPLIANCE WITH COMMONWEALTH LAWS AND POLICIES

- 13.1 [insert short form name] must comply with, and ensure its officers, employees, and agents comply with all Commonwealth laws and policies and NDIA policies relevant to the Trial and must provide such reports and other information regarding compliance as reasonably requested by the NDIA or as otherwise required by a relevant law or policy. If [insert short form name] becomes aware of any actual or suspected breach of the requirements set out in clauses 13.2 to 13.20 below, it must:
- (a) immediately report it to the NDIA and provide a written report on the matter within seven days; and
  - (b) comply with any reasonable directions by the NDIA in relation to any investigation or further reporting of the actual or suspected breach.

## Privacy Provisions in the NDIS Act

- 13.2 [insert short form name] must not do any act or engage in any practice in relation to Protected Agency Information that is a breach of, or an offence under the NDIS Act. [insert short form name] acknowledges and agrees that an unauthorised use or disclosure of Protected Agency Information is a criminal offence under the NDIS Act.
- 13.3 [insert short form name] must not obtain, record, disclose, supply, use or otherwise deal with the Protected Agency Information in any way, except:
- (a) for the purposes of performing the Agreement; and
  - (b) as authorised under the NDIS Act for the purpose of the Research Project.
- 13.4 [insert short form name] must comply with the NDIA's record management policy with respect to any Protected Agency Information that comes into its possession or control when performing the Agreement.
- 13.5 [insert short form name] must implement all reasonable measures to ensure the requirements of these clauses 13.2 to 13.20 inclusive are met.
- 13.6 [insert short form name] must immediately notify the NDIA if it becomes aware that a disclosure of Protected Agency Information may be required by a Law and only disclose such information where permitted by the NDIS Act, including section 67G of the NDIS Act.
- 13.7 [insert short form name] must take all reasonable measures to ensure that Protected Agency Information is used or disclosed only for the purposes of the Research Project and is protected against:
- (a) misuse, interference and loss;
  - (b) unauthorised access, modification, or disclosure; and
  - (c) any other misuse,
- and that only [insert short form name] personnel have access to Protected Agency Information.
- 13.8 [insert short form name] must immediately notify the NDIA of any loss or unauthorised use, modification or disclosure of Protected Agency Information or when [insert short form name] becomes aware of a breach of any obligation concerning such information.
- 13.9 [insert short form name] must notify the NDIA of any investigation into a possible breach of, or an offence under, the requirements of the NDIS Act in relation to Protected Agency Information.
- 13.10 [insert short form name] must at the completion of the Research Project, or earlier upon written notice from the NDIA, return, destroy or permanently de-identify any Protected Agency Information as soon as practicable.



## Indemnity

13.11 [insert short form name] indemnifies the NDIA in respect of any Loss suffered or incurred by the NDIA arising out of or in connection with:

- (a) a breach of the obligations of [insert short form name] under this clause 13;
- (b) any breach of the requirements of the NDIS Act in relation to Protected Agency Information,

except to the extent that the Loss is directly caused by a negligent or unlawful act or omission of the NDIA or any of its officers or employees.

## Obligations in relation to [insert short form name] personnel

13.12 [insert short form name] must ensure that all [insert short form name] personnel are aware of the need to comply with the NDIS Act and this clause 13 in the performance of the Agreement.

## Privacy Act 1988 (Cth) Requirements

13.13 [insert short form name] agrees to comply with, and to ensure that its officers, employees, students and agents comply with the Privacy Act 1988 (Cth) and not do an act, or engage in a practice, that if done or engaged in by the NDIA would breach an Australian Privacy Principle as defined in that Act.

## Storage and transfer of personal information

13.14 [insert short form name] must not hold or store any personal information outside of Australia, or transfer any personal information outside of Australia, or access personal information from outside of Australia, or disclose personal information to an overseas recipient without the NDIA's prior written consent.

## Notifiable Data Breaches

13.15 [insert short form name] becomes aware that there are reasonable grounds to suspect that there may have been, or where the NDIA notifies [insert short form name] that there has been, an Eligible Data Breach in relation to any Personal Information held by [insert short form name] in connection with this Agreement, then [insert short form name] must:

- (a) notify the NDIA in writing as soon as possible, which must be within three days of becoming aware, unless the NDIA has provided written notice that it is already aware of the Eligible Data Breach;
- (b) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates; and
- (c) take any other action as reasonably directed by the NDIA.

13.16 [insert short form name] must ensure that [insert short form name] personnel are fully aware of, and abide by, this clause 13 in the performance of the obligations under the Agreement.

## Freedom of Information

13.17 If the NDIA receives a request for a document under the Freedom of Information Act 1982 (Cth) and:

- (a) the document was created by or is in the possession of [insert short form name] (including [insert short form name]'s personnel); and
- (b) the document relates to, or was created in, the performance of this Agreement (other than the entry into this Agreement),

then, if requested to do so by the NDIA in a notice, [insert short form name] must immediately provide a copy of the document to the NDIA at no additional cost to the NDIA.

## Archives Act 1983 (Cth)

13.18 [insert short form name] must not destroy or arrange for, nor effect a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the NDIA and the National Archives of Australia. All Commonwealth records must be returned to the Customer at the conclusion of the Contract.

13.19 Where the NDIA and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to [insert short form name], [insert short form name] must comply in every respect with the requirements of the Archives Act 1983 (Cth) (Archives Act) or guidelines issued by National Archives of Australia.

13.20 [insert short form name] must comply with any direction given by the NDIA for the purpose of transferring Commonwealth Records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

## 14. DISABILITY INCLUSION

### Commitment to people with disabilities

14.1 [insert short form name] agrees and acknowledges that:

- (a) the NDIA is committed to ensuring that the principles in the United Nations Convention on the Rights of Persons with Disabilities are implemented and that the NDIA is acting in compliance with the obligations in the Relevant Disability Laws; and
- (b) one of the key principles of the National Disability Insurance Scheme is that people with disabilities should be supported in all their dealings and communications with the NDIA so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs (sections 4(9) and 17A(2) of the NDIS Act).

## **[insert short form name] obligations**

14.2 To assist the NDIA to comply with its obligations specified in clause 14.1, [insert short form name] must:

- (c) to the extent they apply to [insert short form name], comply with all Relevant Disability Laws;
- (d) provide all deliverables under the Agreement in a format that is compliant with the Web Content Accessibility Guidelines Version 2.0 (WCAG); and
- (e) use its best endeavours to:
  - (i) create a welcoming workplace and fosters an inclusive culture, where people with a disability feel valued and encouraged to participate; and
  - (ii) attract, appoint, retain and develop employees with a disability.

## **15. WORKING WITH VULNERABLE PERSONS**

### **Definitions**

15.1 For the purposes of this clause 15:

- (a) 'Child' means an individual under the age of 18;
- (b) 'Criminal or Court Record' means any record of any Other Offence;
- (c) 'Other Offence' means, in relation to any Relevant Person, a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
  - a. an apprehended violence or protection order (howsoever described) made against the Relevant Person;
  - b. one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property;
  - c. a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, a prohibited narcotic or any other prohibited substance;
  - d. a crime or offence involving violence against or the injury to, but not the death of, a person;
  - e. a crime or offence involving dishonesty that is not covered by clause 15.1(f)(iii); or
  - f. an attempt to commit a crime or offence described in clauses 15.1(c)(i) to 15.1(c)(v);
- (d) 'Police Check' means a formal inquiry made to the relevant police authority in each Australian State or Territory that is designed to obtain details of the Relevant Person's criminal conviction or a finding of guilt in all places (within and outside Australia) in which [insert short form name] knows the Relevant Person has resided;
- (e) 'Relevant Person' means a natural person who is an actual or potential officer, employee, volunteer, agent or contractor of [insert short form name];
- (f) 'Serious Offence' means:
  - a. a crime or offence involving the death of a person;
  - b. a sex-related offence or crime, including sexual assault (whether against an adult or Child), Child pornography, or an indecent act involving a Child;

- c. fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services; or
- d. an attempt to commit a crime or offence described in clauses 15.1(f)(i) to 15.1(f)(iii);
- (g) 'Serious Record' means a conviction or any finding of guilt regarding a Serious Offence; and
- (h) 'Vulnerable Person' means:
  - (i) a Child; or
  - (ii) an individual aged 18 years and above who is or may be unable to take care of themselves or is unable to protect themselves against harm or exploitation for any reason, including age, physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason.

### **Working with Vulnerable Persons**

15.2 This clause 15 applies to any part of the Research Project that involves working, or contact, with Vulnerable Persons.

15.3 [insert short form name] must:

before engaging, deploying or redeploying a Relevant Person in relation to any part of the Research Project that involves working or contact with a Vulnerable Person, do the following:

- (a) obtain a Police Check for the Relevant Person, unless otherwise agreed by the NDIA;
- (b) confirm that no applicable Commonwealth, State or Territory Law prohibits the Relevant Person from being engaged in a capacity where they may have contact with Vulnerable Persons;
- (c) comply with all other applicable Laws of the place in which that part of the Research Project is being conducted in relation to engaging or deploying the Relevant Person in a capacity where he or she may have contact with Vulnerable Persons; and
- (d) comply with any other conditions required by the NDIA.

15.4 If a Police Check indicates that a Relevant Person has a Serious Record, [insert short form name] must not deploy or redeploy that Relevant Person in relation to any part of the Research Project that involves working or contact with a Vulnerable Person.

15.5 [insert short form name] agrees:

- (a) if a Police Check indicates that a Relevant Person has a Criminal or Court Record, not to engage, deploy or redeploy that Relevant Person in respect of any part of the Research Project that involves working with Vulnerable Persons unless [insert short form name] has conducted and documented a

- risk assessment for that Relevant Person in accordance with clauses 15.7 to 15.9;
- (b) within 24 hours of becoming aware of any Relevant Person being charged or convicted of any Other Offence, or charged with any Serious Offence, to conduct and document a risk assessment in accordance with clauses 15.7 to 15.9 to determine whether to allow that Relevant Person to continue performing any part of the Research Project that involves working with Vulnerable Persons;
  - (c) on becoming aware of a Relevant Person being convicted of a Serious Offence, immediately cease to deploy the Relevant Person in relation to any part of the Research Project that involves working or contact with a Vulnerable Person; and
  - (d) to document the actions [insert short form name] will take as a result of conducting a risk assessment.
- 15.6 [insert short form name] must promptly notify the NDIA if [insert short form name] becomes aware of an occurrence specified in clause 15.5 or [insert short form name] conducts a risk assessment in accordance with clauses 15.7 to 15.9 except to the extent otherwise agreed in writing by the NDIA.
- 15.7 [insert short form name] is wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Relevant Person who has:
- (a) a Criminal or Court Record;
  - (b) been charged or convicted of any Other Offence;
  - (c) been charged with a Serious Offence,
- to work on any part of the Research Project that involves working or contact with Vulnerable Persons.
- 15.8 In undertaking the risk assessment under clause 15.7 in respect of a Relevant Person, [insert short form name] agrees to take into account the following factors:
- (a) whether the Relevant Person's Criminal or Court Record (or the offence that the Relevant Person has been charged with, or convicted of, as specified in clause 15.5(b) is directly relevant to the role that he or she will or is likely to perform in relation to the Research Project;
  - (b) the length of time that has passed since the Relevant Person's charge or conviction and his or her record since that time;
  - (c) the nature of the offence pertaining to the Relevant Person's charge or conviction and the circumstances in which it occurred;
  - (d) whether the Relevant Person's charge or conviction involved Vulnerable Persons;
  - (e) the nature of the services which the Relevant Person is employed or engaged to perform and the circumstances in which the Relevant Person will or is likely to have contact with Vulnerable Persons;

- (f) the particular role the Relevant Person is proposed to undertake or is currently undertaking in relation to the Research Project and whether the fact the Relevant Person has a Criminal or Court Record (or has been charged or convicted as specified in clause 15.5(b)) is reasonably likely to impair his or her ability to perform or continue to perform the inherent requirements of that role;
- (g) the Relevant Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake, or are currently undertaking, in relation to the Research Project; and
- (h) any other factors the NDIA requires [insert short form name] to take into account in conducting a risk assessment for the purpose of this clause.

15.9 After taking into account the factors set out in clause 15.8 in respect of a Relevant Person, [insert short form name] must:

- (a) determine whether the Relevant Person poses an unacceptable risk to Vulnerable Persons; and
- (b) take such action as is appropriate to protect Vulnerable Persons following that assessment and consider whether it is reasonably necessary to any or all of the following:
  - (i) not engage, deploy or redeploy the Relevant Person in relation to the Research Project or any part of the Research Project;
  - (ii) remove the Relevant Person from working in any position or acting in any capacity in relation to any part of the Research Project that involves working or having contact with Vulnerable Persons;
  - (iii) make particular arrangements or impose conditions in relation to the Relevant Person's role in relation to the Research Project (or any part of the Research Project) and, where relevant, his or her contact with Vulnerable Persons; and
  - (iv) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Research Project relates.

15.10 Where [insert short form name] has completed a risk assessment as required by 15.7 a copy must be provided to the NDIA within 14 days of completing the risk assessment.

15.11 Notwithstanding [insert short form name]'s decision under clause 15.9, the NDIA may, at its absolute discretion, to request the replacement of [insert short form name] personnel.

## 16. WORK HEALTH AND SAFETY

- 16.1 In all dealings related to this Agreement, the Parties agree to:
- (a) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces; and
  - (b) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

## 17. GENERAL

- 17.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior communications, negotiations, arrangements and agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement.
- 17.2 **Variation.** Any modification, alteration, change or variation of any term and condition of this Agreement (including all Schedules) shall only be made in writing and shall be effective upon being executed by both Parties.
- 17.3 **Assignment.** A Party may not assign the rights and obligations arising under this Agreement without the prior written consent of the other Party.
- 17.4 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original (and any electronic copy of same will be deemed to be an original), and all counterparts together will be taken to constitute one instrument.
- 17.5 **Relationship.** The Parties are independent contracting parties, and nothing in this Agreement makes any Party the employee, partner, agent, legal representative, trust or joint venture of the other for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other.
- 17.6 **Costs and Taxes.** Each Party shall bear its own costs and taxes arising out of the negotiation, preparation and execution of this Agreement.
- 17.7 **Further Assurances.** Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.
- 17.8 **Severance.** If any provision of this Agreement is invalid or unenforceable, such provision(s) shall be deemed deleted but only to the extent necessary and the remaining provisions of this Agreement shall remain in full force and effect.

17.9 **Governing Law.** This Agreement is governed by the laws of the State of Victoria and each Party submits to the exclusive jurisdiction of the courts of that State.

## 18. SURVIVAL

18.1 Any term which by its nature is intended to survive termination or expiry of this Agreement does so survive, including clauses 1, 6, 7, 8, 9, 10, 11, 12, 13, 17.9 and this clause 18.

## SCHEDULE

Item 1	Research Project	<p>Research Project Reference No.</p> <p>NDIA No: ... [insert] (local number i.e. 2019.600)</p> <p>HREC No: ... [insert] (i.e. ERM number)</p> <p>Research Project Title: [insert description]</p>
Item 2	Commencement Date	[insert date]
Item 3	End Date	<p>[insert End Date of Project and agreement]</p> <p>Conditions for completing the Research Project:</p> <ul style="list-style-type: none"> <li>• Submission of final report</li> </ul>
Item 4	Background Intellectual Property	Click or tap here to enter text.
Item 5	Authorised Representatives	<p><b>NDIA</b>          Director, External Research Partnerships          Research and Evaluation Branch          NDIA          [insert address]          Telephone: [insert telephone]          Email: research@ndis.gov.au</p> <p><b>Signoff is as per the NDIA delegations and is managed by the External Research Partnerships team</b></p> <p><b>[insert short form name]</b></p>



		<p>[insert name]  [insert title]  [faculty]  [insert address]  Telephone: [insert]  Email: [insert]  <b>Facsimile: [insert]</b>  ([Party's name] [principal investigator / relevant officer] <b>may sign</b>)</p>
<b>Item 6</b>	<p><b>[OPTIONAL, retain if clause 6.3(c) is retained]</b>  Limit of time a Party may consider request to publish Research Project IP</p>	[insert number of days or Business Days]
<b>Item 7</b>	<p>Reports / Deliverables  Frequency of Meetings</p>	<p>[Insert times and nature of reports and deliverables, and which Party is responsible for preparation / delivery in each instance]</p> <p>[insert short form name] will deliver a final project closure report to the NDIA by [insert date]. Final report to be in the format agreed in Annexure B [insert title]. Final report to be signed off by the [Authorised Representative] of [Insert short form name].</p> <p>Meetings as agreed between the Parties [insert details].</p>
<b>Item 8</b>	Research Project Data	[insert details of Research Project data, including how it can be requested, who can request, who request is made to, how data will be provided, etc]

**EXECUTED** as an agreement.

**SIGNED** for and on behalf of )  
**NATIONAL DISABILITY INSURANCE** )  
**AGENCY (ABN 25 617 475 104)** by its )  
duly Authorised Representative in the )  
presence of: )

.....  
Authorised Representative (*signature*)

.....  
Witness (*signature*)

.....  
Name of Authorised Representative (*print*)

.....  
Name of Witness (*print*)

.....  
Position

.....  
Date

**SIGNED** for and on behalf of [insert )  
name] (**ABN [insert ABN]**) by its duly )  
Authorised Representative in the )  
presence of: )

.....  
Authorised Representative (*signature*)

.....  
Witness (*signature*)

.....  
Name of Authorised Representative (*print*)

.....  
Name of Witness (*print*)

.....  
Position

.....  
Date

# Annexure A to the Agreement on the provision of aggregated or summary data

Attachment A – External Research Request Form, dated [insert date]

*Attach the External Research Request Form, including the research project protocol, as submitted.*

**OR**

*As described in the HREC approved protocol and associated documentation for research project local number <insert> (ERM number <insert>) and any subsequently approved amendments.*

SAMPLE

# Annexure B to the Agreement on the provision of aggregated or summary data: Research Project Final Report template

## Instructions

The Research Project final report must be completed and returned to the NDIA by the date specified in Item 7 of the Schedule.

Please email a copy of your completed Research Project Final report and any necessary accompanying documents to the NDIA Research and Evaluation Branch at [research@ndis.gov.au](mailto:research@ndis.gov.au).

## Project details

Project title:

Click or tap here to enter text.

NDIA reference number (i.e., ER22000):

Click or tap here to enter text.

Date of this Research Project Final Report:

Click or tap here to enter text.

Date of Research Project completion:

Click or tap here to enter text.

## Requestor details

Please provide details of the chief investigator/project lead and any others. Add boxes if needed.

Chief investigator/Project lead:

First name	Click or tap here to enter text.
Last name	Click or tap here to enter text.
Position	Click or tap here to enter text.

First name	Click or tap here to enter text.
Department	Click or tap here to enter text.
Organisation	Click or tap here to enter text.
Mobile phone	Click or tap here to enter text.
Email	Click or tap here to enter text.
Role in the project	Click or tap here to enter text.

Associate investigator 1/Project team member 1:

Title	Details
First name	Click or tap here to enter text.
Last name	Click or tap here to enter text.
Position	Click or tap here to enter text.
Department	Click or tap here to enter text.
Organisation	Click or tap here to enter text.
Mobile phone	Click or tap here to enter text.
Email	Click or tap here to enter text.
Role in the research project	Click or tap here to enter text.

## Project completion

Date of research completion:

Click or tap here to enter text.

Reason for research project completion:

- Completed
- Withdrawn
- On-hold
- Other (please specify):

Click or tap here to enter text.

The NDIA is committed to maximising the benefits that can be derived from supporting high quality research that aligns to the delivery of the aspirations, goals and related outcomes as stated in the NDIA’s Corporate Plan. Please summarise the Research Project’s outcomes/impacts in relation to the disability sector, community, and the NDIS:

Click or tap here to enter text.

Are the Research Project’s findings to be published and available to the general public, or featured at a seminar/conference etc.?

- Yes
- No

Detail each publication, seminar, conference etc. that features findings from the Research Project (include those submitted for publication or future events):

Click or tap here to enter text.

## Certification

### Certification by Chief Investigator/Research Project lead

Tick the boxes to indicate that you have read and understood each clause.

I, the Chief investigator/Project lead certify that:

- All information in this application is truthful and complete.
- The Research Project was conducted in accordance with the Terms and Conditions Agreement, relevant legislation and regulations.
- The information provided for this project by the NDIA was used only as outlined in the External Research Request form.

Name of Chief investigator/project lead

Click or tap here to enter text.

Signature

Click or tap here to enter text.

Date

Click or tap here to enter text.