#  Research Agreement

## This is a legal and binding agreement between the …………………(“the Researcher”) and the Minister for Child Protection, a body corporate under the *Administrative Arrangements Act 1994* (SA), through the Department for Child Protection (“DCP”) for the provision of data or other DCP information for the purposes of Research on the project named below. The intent of this Agreement is to ensure the highest duty of care with respect to children, young people, employees and resources involved in the research.

**Project Title: …………………………….**

**Project Description:** *at Schedule 2*

1. **Interpretation**

In this Agreement, unless contrary intention appears:

**“Confidential Information”** means and includes any information disclosed by one party to the other that by its nature is confidential, is designated by a Party as confidential or the recipient knows or ought to know is confidential but does not include this Agreement or information which:

1. is trivial or obvious
2. is or becomes public knowledge other than by breach of this Agreement
3. was known by the recipient as at the date of this Agreement, or
4. has been independently developed or acquired by the recipient

###  where the burden of establishing any of the exceptions referred to in (c) or (d) shall be upon the recipient.

**“Project”** means ………(name of project)…………………………..

###  **“Intellectual Property”** means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of confidential information, or any right to registration of such rights and any other form of intellectual property right.

**“Project Intellectual Property”** means any Intellectual Property created or developed as a result of the Project.

**“Publication”** includes media releases, books, articles, newspaper writings, journal entries and journal articles, conference and seminar papers and presentations, essays, theses, and other works of whatever kind and whether in written form, electronic or any other format and “Publish” means making a publication available to the public.

**“Sensitive Information**” means:

1. information or an opinion about an individual’s:
	1. racial or ethnic origin;
	2. political opinions;
	3. membership of a political association;
	4. religious beliefs or affiliations;
	5. philosophical beliefs;
	6. membership of a professional or trade association;
	7. membership of a trade union;
	8. sexual preferences or practices; or
	9. criminal record;

that is also personal information; or

1. health information about an individual.
2. **Legal Consideration**
	1. The Minister agrees to pay $10 on demand to the Researcher.
	2. The Parties agree that this is legal and sufficient consideration paid by the Minister in exchange for the obligations and other undertakings of the Researcher.
3. **Safety of Children and Young People**
	1. If, in performing its obligations under this Agreement, the Researcher and/or its personnel work with children and young people, the Researcher and/or its personnel must comply with the requirements in the *Children and Young People (Safety) Act* *2017* and the *Child Safety (Prohibited Persons) Act 2016***.**
4. **Project Description**
	1. The Researcher must obtain approval from DCP in relation to any significant changes to the Project Description.
5. **Insurance**
	1. The Researcher must have and maintain throughout the term of the Agreement, relevant and appropriate insurances.
6. **Intellectual Property**
	1. Nothing in this Agreement alters the ownership of existing Intellectual Property rights of either party.
	2. Upon its creation, Project Intellectual Property will be owned as specified in Schedule 1.
	3. The Party that owns the Project Intellectual Property will grant to the other Party a perpetual, irrevocable, worldwide, non-transferable, non-exclusive royalty-free, fee-free licence to reproduce, adapt, communicate, publish, modify and otherwise use the Project Intellectual Property for the purpose of continuing internal research, internal business purposes, development and teaching.
7. **Commercialisation of Project Intellectual Property**
	1. In the event of Project Intellectual Property having commercial potential, the parties will negotiate with each other in good faith and use best endeavours to agree the terms of any agreement so as to fairly share in any commercial return associated with the Project Intellectual Property.
	2. Any commercialisation of Project Intellectual Property by a party will acknowledge the assistance of the other party.
8. **Publication**
	1. The Researcher consents to DCP publishing a summary of the Project in internal DCP newsletters and/or on the DCP website.
	2. The Researcher must notify the DCP Strategic Communications Unit at least 14 days prior to any planned media coverage in relation to the Project, inclusive of a copy of the manuscript intending to be published and any drafted press release material and/or documentation.
	3. The Researcher must notify DCP Strategic Communications Unit of all unplanned media coverage at the earliest opportunity.
	4. At least 45 days prior to any submission for publication, the Researcher, if wishing to publish any Project Intellectual Property, must forward a written request to DCP seeking permission to publish information or material arising from the Project and provide a copy of the draft Publication to DCP.
	5. DCP may, but is not obliged to, provide comments back to the Researcher on the interpretation of the information or material contained in the draft Publication.
	6. If DCP decides, in its absolute discretion, that the proposed Publication discloses DCP Confidential Information or Sensitive Information, DCP must notify the Researcher to that effect within 45 days of receipt of the request to publish, giving reasons for the decision not to consent to the proposed Publication being Published, and may, but is not obliged to, suggest alterations to the proposed Publication so that it does not disclose DCP Confidential Information or Sensitive Information.
	7. If the Researcher does not receive written notification that DCP intends withholding its permission under clause 8.6 within 45 days of submission of the draft Publication, consent to publish the Publication will be deemed to have been provided.
	8. The Researcher must include an acknowledgement of each party’s contribution to the Project in any Publication.
	9. If there is a difference of opinion between DCP and the Researcher in respect of the validity or interpretation of research outcomes, the Researcher must obtain approval from DCP prior to any Publication. If DCP approves of the Publication, such differences must be acknowledged in publications, presentations and public forums by way of a disclaimer in the following terms: *The views expressed in this publication / presentation / public forum are not necessarily the views of the Minister for Child Protection.*
	10. Upon termination of this Agreement, and at any other time on demand by DCP, the Researcher must deliver all data provided by or originating from DCP to DCP or destroy it in accordance with DCP’s reasonable directions, and or the Universities record management requirements. The Researcher must provide written certification that the data has been destroyed as directed.
9. **Privacy**
	1. The Researcher acknowledges that the Information Privacy Principles as they relate to the collection, storage, access to, correction, use and disclosure, of personal information, apply to DCP. The Researcher agrees that in performing its obligations under this Agreement it will act in a manner that ensures that DCP is able to comply with the Information Privacy Principles. The Researcher must only collect, use and disclose personal information for the purpose of fulfilling its obligations under this Agreement unless otherwise permitted under this Agreement or the Information Privacy Principles.
	2. For the purposes of this clause, Information Privacy Principles means the Cabinet Administrative Instruction No. 1 of 1989 which can be found at [www.archives.sa.gov.au](http://www.archives.sa.gov.au).
	3. DCP agrees that in performing its obligations under this agreement it will act in a manner that ensures that the Researcher is able to comply with the *Contracting and Official Records Standard* pursuant to Section 14(1) of the *State Records Act 1997* *(*[*South Australian Legislation*](https://www.legislation.sa.gov.au/LZ/C/A/STATE%20RECORDS%20ACT%201997.aspx)*).*
	4. The Researcher agrees to comply with:
10. the general duty of confidentiality relating to individuals’ personal information; and
11. the Australian Privacy Principles in the *Privacy Act 1988* (Cth).
12. **Confidentiality**
	1. The Researcher must not disclose DCP Confidential Information to any person without first obtaining DCP’s consent.
	2. There will be no breach of the obligations by the Researcher under this Agreement if the Confidential Information is legally required to be disclosed or the circumstances of its disclosure are permitted by this Agreement.
	3. The Researcher may disclose DCP Confidential Information to any of its officers, employees, and agents (Authorised Person) if:

(a) the Authorised Person needs to know the DCP Confidential Information for the performance of his or her duties under this Agreement;

(b) the Researcher first notifies the proposed disclosure to DCP; and

(c) the Researcher first makes the Authorised Person aware of the confidential nature of the DCP Confidential Information and requires the employee to treat it confidentially.

* 1. Despite anything else in this Agreement, it is a condition of any permitted disclosure that the Researcher must notify DCP promptly if the Researcher becomes aware of any unauthorised disclosure by a third party. The Researcher must give DCP all assistance reasonably required in connection with any proceedings which it may institute against any persons responsible for the disclosure.
	2. The parties are required to comply with all confidentiality obligations in the *Children and Young People (Safety) 2017* and the *Public Sector (Data Sharing) Act 2016.*
	3. The obligations of confidentiality imposed by this clause 9 survive the expiry or earlier termination of this Agreement.
1. **Student Involvement**
	1. Where a student of the Researcher is involved in the Project, the Researcher must enter into a written agreement with the student to ensure that the student complies with:
2. the requirements of clauses 8.4 and 8.5 of this Agreement as if he or she were the Researcher before submitting his or her thesis or work for examination.
3. the privacy obligations specified in clause 9 of this Agreement.
	1. Nothing in this Agreement will restrict the student’s right to have his or her thesis or work examined, provided that the Researcher will enter into confidentiality arrangements with the student’s supervisors, assessors or examiners as required to fulfil its obligations under this Agreement.
	2. Where the Publication is a student thesis or other examinable work (Student Publication) and DCP determines that the Student Publication contains Confidential Information, Personal Information, Sensitive Information or Project Intellectual Property, DCP must notify the person submitting the work to that effect, giving reasons for the decision, and will either:

(a) require removal of the Confidential Information, Personal Information, Sensitive Information or Project Intellectual Property; or

(b) require that the publication of and public access to the Student Publication be restricted for a period of 2 years or as otherwise agreed in writing between the parties to allow for the protection of any Confidential Information, Personal Information, Sensitive Information or Project Intellectual Property.

1. **Reports of Completed Research**
	1. At any time, DCP may request that the Researcher provide a project status report outlining the current status of the project, including any planned work or publication and any risk of delays.
	2. Any requested project status reports must be provided to DCP within [insert timeframe].
	3. The Researcher must complete the Project by [insert date].
	4. At the completion of the Project the Researcher must provide a copy of an abstract/executive summary of the final report, together with an electronic and hard copy of the final report   to the DCP Research and Evaluation Unit. The Researcher acknowledges that the final report may be circulated within DCP.
2. **Term and Termination**
	1. This Agreement commences on the date of its execution and, unless terminated earlier, will continue until the completion of the Project and a final report has been submitted to DCP.
	2. This Agreement may be terminated by either Party by providing the other Party with thirty (30) days’ written notice.
	3. DCP may immediately terminate this Agreement by written notice to the Researcher if the Researcher:

(a) makes an unauthorised disclosure of Confidential Information;

(b) makes an unauthorised Publication;

(c) commits a breach of any obligation under this Agreement that is not capable of remedy;

(d) fails to rectify a breach of any obligation under this Agreement (other than a breach that is not capable of remedy) within 14 days after receiving notice from DCP requiring rectification of that breach;

(e) ceases to carry on business;

(f) becomes insolvent, bankrupt or subject to the appointment of a receiver or enters into a composition with any creditors; or

(g) fails to obtain the requisite ethics approval.

* 1. Termination of this Agreement does not affect any accrued right or liability of either party nor will it affect the coming into force or the continuation in force of any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after termination.
1. **Disputes**
	1. The parties will use their best endeavours to ensure that any disputes arising in connection with this Agreement will be resolved amicably and expeditiously by consultation or negotiation between them.
	2. The parties agree to make best endeavours to resolve problems expeditiously between themselves, without resort to external processes (including legal proceedings) except in a case of genuine urgency when a party may seek immediate interlocutory relief or an interim remedy.
2. **General**
	1. The Researcher must not assign, encumber or attempt to novate any of its rights or obligations under this Agreement.
	2. The laws in force in South Australia apply to this Agreement.
	3. The courts of South Australia and the Federal Court of Australia have exclusive jurisdiction to determine any proceedings in relation to this Agreement.
	4. Any proceedings brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.
	5. The supplier undertakes not to apply to transfer any proceedings to another registry of the Federal Court.
	6. Any variation to this Agreement must be in writing and be signed by each party.
	7. Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).
	8. This Agreement incorporates the Annexure and contains the entire agreement between the parties with respect to the Project.
	9. This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one (1) instrument. An executed counterpart may be delivered by facsimile or email
	10. Clauses 6, 7, 8, 9, 10 and 11 survive any expiry or termination of this Agreement.
3. **Declaration**
	1. The Researcher declares that:

(a) no change will be made to the Project without DCP’s prior written consent; and

(b) the information provided in the application to conduct research attached to this Agreement is true and correct.

|  |  |
| --- | --- |
| **Signed on behalf of the Minister for Child Protection** | **Witness** |
| Signature |  | Signature |
| Name | Cathy Taylor | Name |
| Address | Chief Executive, Department for Child Protection | Address |
|  |  |  |
| Phone |  | Phone |
| Date |  | Date |  |

|  |  |
| --- | --- |
| **Principal Researcher**  | **Associated Researcher/Supervisor (if student)**  |
| Signature |  | Signature |  |
| Name |  | Name |  |
| Address |  | Address |  |
|  |  |  |  |
| Phone |  | Phone |  |
| Date | Date |  |
| **Witness**  | **Witness** |
| Signature |  | Signature |  |
| Name |  | Name |  |
| Address |  | Address |  |
| Phone |  | Phone |  |
| Date |  | Date |  |

**Schedule 1**

**AGREEMENT DETAILS**

1. **Ownership of Project Intellectual Property**

[Instructions please select preferred option below and delete unused options]

The parties agree that all Project Intellectual Property vests in the Minister upon its creation.

[OR]

The parties agree that all Project Intellectual Property vests in the Researcher upon its creation.

[OR]

The parties agree that all Project Intellectual Property will be held by the parties as tenants in common in equal share.

**Schedule 2**

Description of project: