

Sample Text for Agreement Components

Often, simply establishing that a proposed agreement covers all the important components can be a major impediment. To assist with this, below is a list of agreement sections with example language sourced from a range of successful data use agreements; this is offered as a starting point, not legal advice.

Title

Data Use Agreement for [Data/System] Access between Party 1 and Party 2

Parties and Purpose

This Agreement is between Party 1 [Office, Agency, Department, Institution] and Party 2 [Office, Agency, Department, Institution]. Party 1 and Party 2 are entering into an Agreement that will allow the exchange of data and clarification of data access and use. Party 1 will provide data collected to Party 2 for the purposes of [specify].

Authority

Party 1 is a(n) [specify] organization whose mission is [specify]. The authority for Party 1 to enter into this Agreement is [xxx]. This authority permits the release of [data] to [specify]. The [law/code] permits disclosure of [data] for [specify] functions. Party 2 is an [specify] organization whose mission is [specify].

Terms and Conditions

Description of planned data use by Party 2, consistent with Purpose above.

- *Treatment of data anomalies, including technical assistance from Party 1 and redelivery as needed*
- *Terms for data storage, treatment of original data, handling of Personally Identifiable Information, and data linkage protocols*
- *Conditions for storing modified data (including integrated, recoded, de-identified, and derived data) during and after the project*
- *Terms for storage of researcher generated files (including retention/archiving, e.g., To the extent permitted by law, the original data received from Party 1 will be retained by Party 2 for [specify period].)*

Data Elements

The following data will be provided under this Agreement:

[Specify list of data elements from named programs/systems, noting which time periods, populations, and/or geographies are sought.]

Approved Research Uses

[Describe project objectives, intended data use, expected linkages.]

Roles & Responsibilities

Party 1 agrees

To transfer to Party 2 via [specify, e.g., secure File Transfer Protocol or appropriately encrypted disk], data from [specify] for the years [specify], as described in [Data Elements]. The delivery of [specify] data will occur before [specify].

To disclose data only for the authorized uses in [Terms and Conditions].

To comply with all applicable federal and state laws and regulations relating to the use and disclosure, the safeguarding, confidentiality, and maintenance of the data.

To provide adequate documentation and support of transferred files for Party 2 to be able to interpret the data for the uses permitted in this Agreement, including definitions of variables/data dictionary, a record layout, record count, and record length.

To allow Party 2 to link with [specify] data to complete their analysis.

To allow Party 2 to use the data at the Processing Sites listed in this Agreement for the projects listed in [Approved Research Uses] in this Agreement.

Party 2 agrees

To access, hold, use, and disclose data only for the authorized uses in [Terms and Conditions].

To comply with all applicable federal and state laws and regulations relating to the use and disclosure, the safeguarding, confidentiality, and maintenance of the data.

To ensure that all data users comply with the requirements of this Agreement.

To immediately report within [specify] any use or disclosure of Protected Data other than as expressly allowed by this Agreement. Notice shall be given to the contact [specify]. Any changes in planned use of the data must be submitted to Party 1 in writing and receive written approval.

Duration, Amendments, and Modifications

This Agreement is effective on the date it is signed by both parties. The Agreement shall terminate [specify number of months/years] following the date on which it becomes effective. If, at the end of [same number of months/years above], the parties wish to continue the relationship, they must execute a new Agreement.

The parties shall review this Agreement at least once every [specify] or whenever a [State/Federal/Local] statute is enacted that materially affects the substance of the Agreement, in order to determine whether it should be revised, renewed or canceled.

Notwithstanding all other provisions of this Agreement, the Parties agree that

a. This Agreement may be amended at any time by written mutual consent of both parties and

b. Either party may terminate this Agreement upon thirty (30) days written notice to the other party.

Termination

Either party may terminate this Agreement for any reason on [specify number of days] business days' notice to the other party. Each party may terminate this Agreement with immediate effect by delivering notice of the termination to the other party, if the other party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and the failure, inaccuracy, or breach continues for a period of

[specify number of days] business days' after the injured party delivers notice to the breaching party reasonably detailing the breach.

Ownership of Developed Intellectual Property

If either party develops any new Intellectual Property in connection with this Agreement, the parties shall enter into a separate definitive Agreement regarding the ownership of that new Intellectual Property.

Resolution of Disagreements

Should disagreement arise on the interpretation of the provisions of this Agreement, or its amendments and/or revisions, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty (30) days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

Confidentiality and Non-Disclosure

Party 2 shall use appropriate safeguards to protect the data from misuse and unauthorized access or disclosure, including maintaining adequate physical controls and password protections for any server or system on which the data is stored, ensuring that data is not stored on any mobile device (for example, a laptop or smartphone) or transmitted electronically unless encrypted, and taking any other measures reasonably necessary to prevent any use or disclosure of the data other than as allowed under this Agreement. Party 2 shall ensure that any agents, including subcontractors, to whom it provides the data agree to the same restrictions and conditions listed in this Agreement. Party 2 will not attempt to identify any person whose information is contained in any data or attempt to contact those persons.

IT Security

[Specify Statutes or Acts] protect the confidentiality of the data. Party 2 will comply with all laws applicable to the privacy or security of data received pursuant to this Agreement.

Publication/Disclosure Rules

Party 2 will ensure that any study, report, publication, or other disclosure of data provided under this Agreement is limited to the reporting of aggregate data and will not contain any information identifiable to a private person or entity. Aggregate data for purposes of this Agreement will mean datasets consisting of no fewer than [specify cell restrictions or alternative disclosure limitation methods]. [Include citation and/or disclaimer language if desired.]

The dissemination and use of publicly released reports, articles, and other products derived in whole or in part from the data will not be discontinued due to the expiration or termination of this Agreement. Furthermore, the use of data linked to other data as part of the projects described in Attachment B will not be discontinued due to expiration or termination of this Agreement.

Party 2 agrees to provide Party 1 with an advance copy of any publication resulting from

the data use not less than [specify number of days] prior to the submission or disclosure of the publication, to permit Party 1 to reasonably comment, update, or otherwise propose modifications or edits to the draft publication and to ensure there is no disclosure of confidential data. If Party 1 does not respond to Party 2's submission of materials for its review for [specify period], Party 2 may proceed to publish or present these materials.

Limitations on Liability

In no event shall either party be liable to the other party under this Agreement or to any third party for special, consequential, incidental, punitive, or indirect damages, irrespective of whether such claims for damages are founded in contract, tort, warranty, operation of law, or otherwise or whether claims for such liability arise out of the performance or non-performance by such party hereunder.

Monitoring and Breach Notification

In the event of an actual or suspected security breach involving its information system(s), Party 2 will immediately notify Party 1 of the breach or suspected breach and will comply with all applicable breach notification laws. The parties agree to cooperate in any breach investigation and remedy of any such breach, including, without limitation, complying with any law concerning unauthorized access or disclosure.

Remedies in Event of Breach

The parties recognize that irreparable harm may result in the event of a breach of this Agreement. In the event of such a breach, the non-breaching party may be entitled to enjoin and restrain the other from any continued violation. This section shall survive termination of the Agreement. In the event that a breach is identified and it is determined by the non-breaching party that (a) individual or public notification is required and (b) that the requirement for notification is substantially caused by the other party, the party responsible for the breach shall be liable for the reasonable costs incurred by the other party to meet all federal and state legal and regulatory disclosure and notification requirements, including, but not limited to, costs for investigation, attorneys' fees, risk analysis, and any required individual or public notification, fines, and mitigation activities.

Signatures

Party 1 Name, Title, Date

Party 2 Name, Title, Date

Additional sections, as appropriate

Contacts

*Party 1's designated contact concerning this Agreement is
Name, Title, Address, Phone, Email.*

*Party 2's designated contact concerning this Agreement is
Name, Title, Address, Phone, Email.*

User Training

Party 2 will annually sign an acknowledgment that all individuals authorized to have access to disclosed data have been instructed, as specified by Party 1 in [specify], with regard to the confidential nature of the data, and that each authorized individual has taken Party 1's [specify training]. Party 2 will take all necessary steps to ensure that the individuals who have access to data comply with the limitations on data use, access, disclosure, privacy, and security set forth in this Agreement. Such steps will include, but not be limited to, requiring each individual with access to data to acknowledge in writing that he/she understands and will comply with such limitations [specify Non-Disclosure Agreement terms, as applicable].

Public Information

To promote organizational transparency, and in support of data discovery for current and future researchers, Party 2 may publish non-sensitive data documentation to public-facing websites. This documentation may include a project abstract, description, or summary of results.

Use of Name

Neither party will use the other party's name, logos, trademarks, or other marks without that party's written consent.

Community Stakeholders

The parties agree to engage community stakeholders in the course of this research project. No confidential data will be released or discussed with third parties, but the parties may agree to disclose de-identified aggregate reports to support their initiatives and engage community stakeholders.

Costs

This project shall not result in the transfer of funds from one party to another. Party 1 agrees to provide technical assistance to Party 2 to develop and deliver the initial data extract. If the parties determine that additional staff or supports are necessary at any stage of this research project, Party 2 agrees to seek funding to support those needs.