

# General terms and conditions

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## 1. Definitions and interpretation

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### Definitions

1.1 **“Agreement”** includes these General Terms and Conditions as varied in Schedule 1, the Contract Details and all schedules and appendices attached hereto.

**“Anonymised”** means having had all names, addresses, and any other Identifying Information removed.

**“Business Day”** means a day on which registered banks are open for business in Auckland, New Zealand, excluding Saturdays, Sundays and public holidays.

**“Contract Details”** means the contract details appearing at the front of this Agreement.

**“Data”** means the aggregated information collected about Study Participants in the Study.

**“Data Access Committee”** means the committee appointed by UniServices to consider applications from institutions who wish to gain access to Data Sets.

**“Data Set”** means the Anonymised Data Set drawn from the Data which is provided by UniServices to the Institution under this Agreement in response to the Institution’s Application.

**“Dissemination Plan”** means the statement of the Institution presented to the Data Access Committee setting out where and when the results of the Institution’s research using the Data Set will be published and includes any changes approved by the Data Access Committee or, where authorised by UniServices, approved by the chair of the Data Access Committee.

**“End Date”** means the End Date specified in the Contract Details.

**“Identifying Information”** means information about a Study Participant or other identifiable individual affected by the Study (including a deceased Study Participant or other identifiable individual) and Data from which the identity of a Study Participant or other identifiable individual affected by the Study could reasonably be ascertained.

**“Institution’s Application”** means the Institution’s application to the Data Access Committee, made in accordance with protocols as may be advised by UniServices from time to time, to gain access to the Data Set and includes the Research Plan and the Dissemination Plan.

**“Related Company”** has the meaning given to that term in section 2(3) of the Companies Act 1993, and the term **“Related Companies”** has a corresponding meaning, and each of those terms includes any company or similar entity which would be a related company within that definition if incorporated as a company in New Zealand.

**“Research”** means the research outlined in the Research Plan for the Institution’s Application that has been approved by the Data Access Committee.

**“Research Plan”** means the Institution’s proposal presented to the Data Access Committee outlining the research the Institution intends to carry out using the Data Set and any changes to that proposal subsequently approved by the Data Access Committee or, where authorised by UniServices, approved by the chair of the Data Access Committee.

**“Personnel”** of any entity means any director, officer, employee, contracted staff member or other worker of that entity or that entity’s contractors, agents and authorised representatives, and in the case of the Institution includes the Principal Researcher.

**“Principal Researcher”** is the person responsible for the conduct of the Research by the Institution described in the Contract Details.

**“Study”** means the longitudinal study of children and families known as *Growing Up in New Zealand*; Research with Children and their Families.

**“Study Participant”** means an individual who is a participant in the Study and includes both children enrolled in the Study sample whose parents or legal guardians have consented to their participation in the Study and parents or other persons linked to the children who have consented to their own participation in the Study.

**“UniServices group”** means UniServices, every Related Company of UniServices and the University.

**“University”** means The University of Auckland.

### Interpretation

1.2 In this Agreement:

- (a) Where the context permits, the singular includes the plural and vice versa.
- (b) References to any “party” means a party to this Agreement.
- (c) References to a party in this Agreement includes the successors, executors, administrators and permitted assignees (as the case may be) of that party.
- (d) References to a month or a year are references to a calendar month or calendar year.

- (e) All references to legislation are references to New Zealand legislation and include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation.
- (f) ) References to a “person” include an individual, firm, company, corporation or un-incorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority.
- (g) References to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this Agreement (unless stated otherwise). Each such schedule and attachment forms part of this Agreement.
- (h) This Agreement will not be interpreted against any party responsible for its preparation.
- (i) “including” in this Agreement means “including, without limitation.”

## 2. Institution obligations

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### Permitted use

- 2.1 The Data Set may only be used by the Institution for the purposes of the Research.

### Limited disclosure

- 2.2 The Institution will not, directly or indirectly, disclose or permit to be disclosed to any person the Data Set and/or any results obtained from use of the Data Set except in accordance with the Dissemination Plan.

### Security

- 3. One copy of the Data Set may be held centrally on the Institution’s computer systems. Apart from copies kept for back-up purposes only, no other copies of the Data Set will be made by the Institution. The Data Set may not be copied to local workstations or computers, whether standalone or linked to the Institution’s computer system.
- 4. The Institution will have and maintain security arrangements to safeguard the Data Set from unauthorised access that adhere to industry-accepted “best practices” for information of the same level of sensitivity. The Institution will ensure, if the Data Set is stored centrally on the Institution’s computer system, that access is limited to the Institution’s Personnel who are permitted under this Agreement to access the Data Set.
- 5. Only the Principal Researcher and the Institution Personnel listed in Schedule 2 will be permitted by the Institution to access the Data Set.

- 2.6 The Institution will ensure that its Personnel who are granted access to the Data Set are aware of and comply the terms of this Agreement.

### Use of data set not to identify study participants

- 2.7 In using the Data Set the Institution will ensure that no process is conducted that will or will likely generate Identifying Information about a Study Participant. Without limiting the generality of the foregoing:
  - (a) The persons permitted to access the Data Set under this Agreement may not use or attempt to use the Data Set, or any results obtained from use of the Data Set, to obtain or derive Identifying Information about Study Participants; and
  - (b) The Institution will ensure that any report or published analysis based on the Data Set does not directly or indirectly disclose Identifying Information relating to any Study Participant.

### Notifications

- 8. The Institution will notify UniServices as soon as is practicable of any errors that may be discovered in the Data Set.
- 9. If the Institution becomes aware of any breaches of the conditions laid down in this agreement, it will promptly notify UniServices.

### Audit

- 2.10 A representative of UniServices will be permitted access by the Institution, at all reasonable times, to the results and analyses obtained from the use of the Data Set together with any records and documents relating thereto for the purpose of verifying compliance with the conditions of this Agreement. The Institution will provide UniServices with any information which UniServices reasonably requests in relation to the Institution’s compliance with this Agreement.

### Compliance with laws and ethics approvals

- 2.11 The Institution will comply with all applicable laws, including all applicable regulatory and ethical consents and approvals when using the Data Set or any results arising from such use.

## 3. Outputs

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### Approval of outputs

- 3.1 All outputs that are intended for publication, including (but not necessarily limited to) reports, journal papers, working papers, conference and other public presentations, and other documents based on the Data Set intended for the public domain must be approved by the Data

Access Committee before they are submitted for publication to ensure that the publication is consistent with this Agreement, and in particular that it preserves the anonymity of the Data and does not jeopardise the long-run value, integrity and sustainability of the Study.

2. All outputs that are intended for publication, including (but not necessarily limited to) reports, journal papers, working papers, conference and other public presentations, and other documents submitted to the Data Access Committee for approval that involve ethnic-specific presentations must be highlighted by the Institution.
3. UniServices will use reasonable endeavours to ensure that the Data Access Committee respond to requests for approval within 14 Business Days but UniServices will not be liable for any loss or damage arising from any delay, howsoever caused. The Institution will carry out any amendments to a report or analysis requested by the Data Access Committee before the report or analysis is published or otherwise released. The Data Access Committee's approval of a report or analysis for publication does not otherwise relieve the Institution from any of the Institution's obligations under this Agreement.

#### **Acknowledgement of source**

- 3.4 The Institution will ensure that all outputs that are intended for publication, including (but not necessarily limited to) reports, journal papers, working papers, conference and other public presentations, and other documents, contains an acknowledgement that the Data Set has been sourced from The University of Auckland, *Growing Up in New Zealand: Longitudinal Study of New Zealand Children and Families*, together with an appropriate acknowledgement of the funders of the study, all of which must be approved by the Data Access Committee in writing prior to the publication.

## **4. Intellectual property**

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- 4.1 Copyright and all other intellectual property rights relating to the Data Set are vested in UniServices. Except as expressly provided for in this Agreement, use by the Institution or the Institution's Personnel of the Data Set does not transfer any right (including intellectual property rights), title or interest in the same.

## **5. Liability**

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#### **Exclusion of liability**

- 5.1 To the extent permitted by law, access to the Data Set under this Agreement is provided without any representations, guarantees or warranties of any kind. No warranty is given by UniServices that the Data Set is error free. To the extent permitted by

law, neither any member of UniServices group nor their respective Personnel will be liable in any way for any use made of the Data Set.

#### **Indemnity**

- 5.2 The Institution will indemnify each member of the UniServices group and their respective Personnel (each "Indemnified Person") from and against any and all liability, loss, damage, expense (including reasonable legal fees) that Indemnified Person may suffer or incur from any claim, demand, action or suit that may be made against such Indemnified Person due to any breach by the Institution of this Agreement or the Institution's negligence or default (or the negligence or default of any of the Institution's Personnel) in the connection with the Data Set.

## **6 Termination**

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#### **On end date**

- 6.1 This Agreement will terminate on the End Date (or such other date substituted for that date by agreement in writing by the parties) unless terminated earlier in accordance with its terms.

#### **By institution**

- 6.2 The Institution may at any time terminate this Agreement at any time by giving notice in writing to UniServices.

#### **Completion or abandonment**

- 6.3 This Agreement will terminate on completion or abandonment of the Research by the Institution, if this occurs before the End Date. The Institution will immediately notify UniServices in writing of the occurrence of either event.

#### **Additional termination rights of UniServices**

- 6.4 In addition to any other right of termination or remedy conferred on UniServices under this Agreement or by law, this Agreement may be terminated at any time and with immediate effect by written notice given by UniServices to the Institution if:
  - (a) The Institution has failed to comply with an earlier notice given by UniServices specifying a breach of this Agreement by the Institution and, in the case of a breach which is capable of remedy, requiring that the Institution to remedy that breach within 5 Business Days of receipt of that earlier notice;
  - (b) The Institution goes into liquidation (otherwise than for a solvent restructuring which has been previously approved in writing by UniServices (which approval may not be unreasonably withheld)) or a receiver

or statutory manager or administrator has been appointed in respect of the Institution or any material part of its assets or if any event analogous in nature has occurred in respect of the Institution under the laws of any relevant jurisdiction;

- (c) The Institution suspends, for 10 Business Days or longer, or ceases, its principal business activities;
- (d) The Institution enters into any compromise, arrangement or moratorium affecting the rights of its creditors (including where a deed of company arrangement is executed by the Institution as provided in Part 15A of the Companies Act 1993) (other than for the purposes of a solvent restructuring);
- (e) There occurs any change in the composition of the shareholding in, or the board of directors of, the Institution or if the Institution ceases to be controlled by the same persons as at the date of this Agreement;
- (f) ) The Institution (if the Institution is an individual):
  - (i) Dies; or
  - (ii) Is adjudicated bankrupt or commits any act of bankruptcy; or
  - (iii) Becomes, or if any of the Institution's property becomes, the subject of an order made pursuant to the Protection of Personal and Property Rights Act 1988.
- (g) The Institution (if the Institution is a partnership) is dissolved.

#### **Consequences of termination for any reason**

- 6.5 Upon termination of this Agreement for any reason:
- (a) Such termination will be without prejudice to the rights and remedies of UniServices in respect of any antecedent breach of this Agreement by the Institution.
  - (b) All obligations contained in this Agreement which are by their nature intended to and are capable of surviving the termination will continue in full force and effect according to their terms.
  - (c) The Institution and all persons who have access to the Data Set will cease to use the Data Set and will promptly destroy (and certify to UniServices in any reasonable format requested by UniServices the destruction) of:
    - (i) all copies of the Data Set or any part of the Data Set (whether in hard copy, electronic form or otherwise); and

(ii) all copies of any Identifying Information of any kind (whether in hard copy, electronic form or otherwise), which has been obtained or generated from any use of the Data Set,

provided that nothing in this clause 6.4(c) will require the Institution to destroy any reports or analyses based on the Data Set that have been published prior to termination of this Agreement with the approval of the Data Access Committee under clause 3.

## **7. Disputes**

1. The parties will meet and discuss in good faith any dispute between them arising out of this Agreement.
2. Neither party may require any arbitration, or issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken reasonable steps to comply with clause 7.1.
3. The Institution agrees monetary damages alone would not be an adequate remedy for a breach of its obligations under this Agreement. In addition to any other remedy which may be available in law or equity, the Institution agrees that UniServices will be entitled to interlocutory injunctive relief to prevent a breach of this Agreement.

## **8. Notices**

- 8.1 Any written notice required to be given pursuant to this Agreement will (without limitation) be deemed validly given if:
  - (a) Delivered by hand or sent by facsimile transmission (provided that the sender's facsimile machine confirms transmission to the intended recipient) to the intended recipient's physical address or facsimile number, as set out on the cover page of this Agreement (or to such other physical address or facsimile number as the intended recipient will notify to the other party by written notice from time to time); and
  - (b) Signed on behalf of the party giving that notice.
- 8.2 For the purposes of this Agreement, any notice transmitted by facsimile or delivered after 5.00pm on a Business Day, or at any time on a non Business Day, will be deemed received at 9.00am on the next Business Day.

## **9. Assignment**

- 9.1 The Institution may not transfer or assign any of its liabilities or rights under this Agreement to any other person without the prior written consent of UniServices, which consent may be withheld at UniServices' absolute discretion.

## 10. General

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### **Entire arrangement**

1. This Agreement records the entire arrangement between the parties relating to the matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

### **Governing law and jurisdiction**

2. This Agreement is governed by the laws of New Zealand and the parties submit to the non exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

### **Relationship between the parties**

3. Nothing expressed or implied in this Agreement will constitute either party as the partner, agent, employee or officer of, or as a joint venturer with, the other party, and neither party will make any contrary representation to any other person.

### **Partial invalidity**

4. If any provision of this Agreement is or becomes invalid or unenforceable, that provision will be deemed deleted from this Agreement and such invalidity or unenforceability will not affect the other provisions of this Agreement, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

### **Non waiver**

5. No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party will in any way limit or waive the right of that party to subsequently enforce and compel strict compliance with this Agreement.

## 11. Schedule 1

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### **Amendments to general terms and conditions**

1. UniServices reserves the right to terminate this agreement at any time on five days notice in writing to the Institution whereupon clause 6.5 shall apply.

## 12. Schedule 2

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Personnel permitted to access the DataSet:



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