

Data Transfer Agreement Template FAQs

Are all Data Custodians required to use this agreement?

No, this is a template for a Data Transfer Agreement and it will be recommended that it is used as a basis for negotiating the contract covering transfer of data between Data Custodians and the Centre for Data Linkage (CDL).

Who should be a Party to this agreement?

This agreement should be between the Data Custodian i.e. the organisation legally responsible for the data and the CDL.

We do not recommend that the agreement is between the Data Linkage Unit (DLU) and the CDL. If the Data Custodian wishes the data to be transferred to the CDL by the DLU then they should make appropriate arrangements with the DLU for this to occur and specify how the data will be transferred in Schedule 1 of the agreement.

What will the CDL do if there is a breach of conditions by a researcher?

This agreement covers the transfer of data to the CDL for the purpose of creating a national linkage map. It does not cover the transfer of data to researchers. It is anticipated that all Data Custodians will require researchers to sign a separate data transfer agreement which would outline the consequences of breaching the terms and conditions of the data transfer.

Should there be a section regarding Intellectual Property in the Agreement?

The PHRN has sought legal advice on the Intellectual Property (IP) surrounding Jurisdictional Linkage Keys (JLK), National Linkage Keys (NLK) and the National Linkage Map (NLM). The advice from Mallon and Co was that it was unlikely that there was any IP in the JLKs/NLKs and NLM and in light of this legal opinion, it was deemed unnecessary to deal with IP in the Data Transfer Agreement. Therefore the data transfer agreement focuses on defining the obligations with regards to the use and protection of the data and linkage keys. This approach is consistent with the advice from Mallon and Co.

The current version of the Data Transfer Agreement template limits the way the CDL can use the Supplied Data and the JLKs. The commercial exploitation of the keys will be controlled by the PHRN Access and Pricing policy. It should be noted that the current template has been drafted on the basis that the Data Custodians will provide both the demographic data and the JLKs to the CDL. If this is the case, then, if the Jurisdictional Linkage Unit wants to exercise control over the use of the JLKs then they should do so via their agreement with the Data Custodians (or if they are part of the same organisation via their internal policies).

Why aren't there any insurance and indemnity clauses in the template?

It is assumed that any signed final agreements would include clauses which cover insurance and indemnity. However, it is assumed that each organisation will have

specific insurance and indemnity requirements and that they will want to negotiate these with Curtin University on an individual basis. Therefore they are not included in the template.

Do I have to use the term “warrants” which is used in clauses 4.3, 4.4, 6.1 and 8.1?

Some parties may not like the term “warrants” although it is the preferred legal term an alternative is “confirms” or “acknowledges”.