Memorandum of Understanding

**relating to the sharing of information for monitoring and reporting on the [name of service] service.**

**Accident Compensation Corporation**

**and**

**[Full name of second party]**

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# Memorandum of Understanding

# Parties

**Accident Compensation Corporation,** a statutory corporation continued by the Accident Compensation Act 2001 (**ACC**)

and

[Insert full name of second party, e.g., **Name of Non-Governmental Organisation** (**XYZ**)]

# Background

1. The parties have entered into an Agreement for [**name of service**]*.* That Agreement requires the parties to share information using a data exchange. This Memorandum of Understanding (**MOU**) is entered into by the parties to facilitate the parties’ use of the data exchange specified by ACC.
2. The parties wish to share specific kinds of information (the **Specified Information**) for specific purposes (the **Specified Purposes**) and consider themselves permitted by law to do so.
3. The parties recognise the importance of limiting the use of the shared Specified Information for the Specified Purposes and of safeguarding the Specified Information against loss, unauthorised access, use or disclosure and other misuse.
4. This MOU prescribes the parties’ expectations and the controls that apply to the sharing and use of the Specified Information.
5. Term and effect of MOU
   1. This MOU commences on the Start Date and will continue until the End Date (the **Term**), unless terminated earlier in accordance with clause 10.
   2. The parties may agree in writing to extend the Term at any time prior to expiry of the MOU.
   3. The legal effect of this MOU (that is, whether it is intended to be legally enforceable or not) is stated in Schedule 1.
   4. Nothing in this MoU takes precedence over the Agreement between ACC and [**second party**] for [**name of service**].
   5. This MOU:
      1. is not an approved information sharing agreement under Part 7 of the Privacy Act 2020;
      2. does not authorise any breach of the Information Privacy Principles (**IPPs**) in that Act; and
      3. does not authorise any act or omission that would be contrary to law.
6. Objective of MOU
   1. The objective of this MOU (the **Objective**), the Specified Information and the Specified Purposes are set out in Schedule 1.
   2. The parties agree that the sharing of the Specified Information for the Specified Purposes is intended to facilitate the furtherance or achievement of the Objective.
7. Sharing and use of information
   1. The parties agree to share the Specified Information for the Specified Purposes, in accordance with the terms of this MOU, including any specific requirements set out in Schedule 1.
   2. A party (the **Receiving Party**) may use Specified Information received from the other party (the **Disclosing Party**) for any Specified Purpose for which the information has been shared.
   3. Subject to clause 3.4, the Receiving Party will not use that Specified Information for a purpose (the **Other Purpose**) that is not a Specified Purpose unless:
      1. where the Privacy Act’s IPP10 applies, use of the Specified Information for the Other Purpose would be consistent with IPP10; or
      2. where another law applies, use of the Specified Information for the Other Purpose would be required or authorised by that other law.
   4. The parties may agree that, in certain situations, the Receiving Party will need to either:
      1. obtain the Disclosing Party’s prior written consent before using Specified Information for the Other Purpose; or
      2. notify the Disclosing Party before or after using the Specified Information for the Other Purpose.

Any such agreement will be as specified in Schedule 1.

1. Justifications for sharing
   1. The justification(s) for the sharing of the Specified Information for the Specified Purposes are set out in Schedule 1.
   2. If, at any time during the Term, either party no longer believes that the justification(s) apply or that there has been a change in law, practice or government policy that affects the parties’ ability to rely on the justification(s), that party will inform the other party promptly and the parties will meet as soon as practicable to assess:
      1. whether the sharing remains lawful and appropriate;
      2. whether the sharing should continue or cease;
      3. whether the parties should consult the Office of the Privacy Commissioner; and
      4. any other matters that either party considers relevant.
2. Operating principles
   1. The parties agree that, in all dealings with one another relating to this MOU, they will:
      1. act fairly and in good faith;
      2. work together in a spirit of open and transparent collaboration;
      3. respect and acknowledge each other’s roles and responsibilities;
      4. be ever cognisant of the substantial levels of trust that clients who share personal information with them place in them and the responsibilities they have to clients; and
      5. take all reasonable steps to ensure non-adversarial dealings with one another, including the taking of constructive steps to avoid or resolve differences and identify mutually acceptable solutions.
3. General responsibilities
   1. Without limitation to the requirements of any justification for sharing specified in Schedule 1 or the requirements of this MOU, each party will comply with the other party’s reasonable requirements relating to:
      1. the methods and timing of sharing of the Specified Information;
      2. technical standards that need to be followed in relation to the sharing of the Specified Information;
      3. access control, security and storage requirements that need to be implemented for the sharing of the Specified Information;
      4. quality checking of the Specified Information to be shared;
      5. security vetting of Personnel who will have access to the Specified Information; or
      6. how to deal with technical faults or corrupted data.
4. Security of information
   1. **Information handling**

The parties will handle the Specified Information:

* + 1. with all due care;
    2. in accordance with the law, including the Privacy Act 2020 and any relevant Code of Practice under that Act (such as the Health Information Privacy Code 1994, where applicable); and
    3. with all due regard to the potential sensitivity of the information to the individuals to whom the information relates.

* 1. **Security measures**
     1. Each party agrees that all Specified Information is confidential and that it will only share it with the other party via secure, encrypted means.
     2. Each party will ensure that:
        1. the Specified Information it receives under this MOU is protected from loss, unauthorised access, use, modification, disclosure and other misuse;
        2. that Specified Information is stored securely on managed systems with password and firewall protection, with access allowed only to those Personnel doing work that involves using the Specified Information in accordance with this MOU;
        3. its Personnel dealing with that Specified Information are aware of, and comply with, the responsibilities under this MOU, including the limitations on use and disclosure of the information;
        4. it complies with any additional security controls described in Schedule 1; and
        5. no Specified Information it receives under this MOU will be taken or transmitted beyond the receiving party’s secure internal systems and premises, unless specified otherwise in Schedule 1 (with or without additional specified controls) or agreed in writing from time to time with the other party.
  2. **Use of third-party contractors**
     1. If a party:
        1. uses the services of any third party under a contract for services; and
        2. that third party or its employees or consultants have, will have or may have access to any of the Specified Information,

the contract with the third party must contain terms relating to security of information that contain protections and controls equivalent to those in clauses 7.1, 7.2, 7.4(a)-(c), 7.8 and 7.9 of this MOU.

* 1. **Privacy breaches**
     1. Each party acknowledges the importance to the other of compliance with both the Privacy Act and the Privacy Breach Guidelines.
     2. If there is a privacy breach, each party will be responsible for investigating and addressing the breach to the extent that the breach:
        1. involves Personal Information that the party holds or is deemed by the Privacy Act to hold; or
        2. involves Personal Information that the party possesses or processes on behalf of the other party; or
        3. has or is likely otherwise to have been caused or contributed to by that party,

and in each case in accordance with the party’s own privacy and internal investigation policies and processes and the Privacy Breach Guidelines.

* + 1. Each party will cooperate with the other as required in the investigation of a privacy breach.
    2. Neither party will make any public comment on a privacy breach that involves or affects the other party (an **Impacting Privacy Breach**) without first consulting the other party and each party will use its best endeavours to consult the other party on an Impacting Privacy Breach before discussing the matter with any Information Regulator. However, where relevant, this clause does not prevent ACC from keeping its responsible Minister(s) informed of such matters as it considers appropriate, provided that ACC informs the other party before doing so or, if not practicable, within a reasonable time after doing so.
    3. Where an internal investigation confirms the loss or unauthorised disclosure of, or unauthorised access to, Specified Information, amounting to an incident that the party intends to notify to the Office of the Privacy Commissioner, and the breach is an Impacting Privacy Breach, the party experiencing the breach will notify the other party as soon as possible.

* 1. **Suspension of information sharing**
     1. If:
        1. there is a privacy breach that has or is likely to have an impact on one or more individuals or either of the parties; or
        2. either party has reason to believe a justification for sharing in Schedule 1 is or may be incorrect; or
        3. a serious complaint is lodged with either party, the Ombudsmen or an Information Regulator in relation to an information flow covered by this MOU,

the party that controls the flow of information may, subject to clause 7.5(b), suspend the flow of information for a period that that party considers reasonable given the nature and severity of the complaint and any ongoing risk to the security of the kind of information in question.

* + 1. If a proposed suspension would affect either party’s ability to perform its functions (particularly functions relating to the protection of individuals’ health, safety or wellbeing), the party proposing the suspension will not implement the suspension without first consulting the other party.
  1. **Consultation with Information Regulators**

If either party wishes to seek assistance from or consult an Information Regulator in relation to any form of information sharing covered by this MOU, it will first consult with the other party. To avoid doubt, this clause 7.6 does not prevent:

* + 1. if applicable, ACC from keeping its responsible Minister informed of such matters as it considers appropriate and at one or more times that it considers appropriate; or
    2. a party from responding to a request from an Information Regulator pursuant to the exercise of that Information Regulator’s functions.
  1. **Official Information Act and Privacy Act requests**
     1. The parties acknowledge that, as a matter of law, each party remains responsible for complying with its own obligations under the Official Information Act 1982 (**OIA**) and the Privacy Act 2020.
     2. Where one party (the **first party**) holds or processes information on behalf of the other (the **second party**) that is relevant to an OIA or Privacy Act request, the **first party** will assist the **second party** in responding to the request to the extent reasonably required.
     3. If an individual makes a request to one party for his or her Personal Information under IPP 6 of the Privacy Act 2020 or requests correction of his or her Personal Information under IPP 7, that party does not need to consult the other party, unless:
        1. the information to which the request relates is held or substantially held by the other party, such that the request may need to be transferred to the other party under section 43 of the Privacy Act 2020; or
        2. the other party may have information relevant to the existence or application of a good reason under Part 4 of the Act for refusing a request under IPP 6 (for example, the other party may have information as to whether a request should be withheld on the basis that disclosure would be likely to endanger someone’s safety or prejudice the investigation of an offence).
     4. If either party receives:
        1. an OIA or Privacy Act-related complaint relevant to the operation or administrative arrangements of this MOU; or
        2. an OIA request for information relating to the operation or administrative arrangements of this MOU (including a media enquiry that could affect the other party),

the parties will consult with each other on the proposed response prior to making a decision on the complaint or request.

* 1. **Confidentiality**
     1. Neither party may disclose to a third party any of the other party's Confidential Information, other than:
        1. as expressly permitted by this MOU;
        2. in proper performance of this MOU;
        3. as authorised by law or as required by law, Ministers, Select Committees or Parliamentary questions; or
        4. with the prior written consent of the other party.
     2. A party (the **Disclosing Party**) must immediately notify the other party in writing on becoming aware of any:
        1. potential, threatened or actual misuse or unauthorised disclosure of the other party’s Confidential Information; or
        2. breach of the Disclosing Party's confidentiality obligations,

and will co-operate with the other party in preventing or limiting such misuse, unauthorised disclosure or breach, which may include investigating the misuse or unauthorised disclosure.

* + 1. Where an investigation is undertaken, the parties will provide each other with reasonable assistance and will keep each other informed of progress.
  1. **Security breach**
     1. Without limitation to clause 7.4, if either party has reasonable cause to believe that any breach of security relevant to the subject matter of this MOU has occurred or is likely to occur:
        1. the party with that belief must promptly notify the other party in writing of the actual or likely security breach; and
        2. the parties may undertake such investigations in relation to the actual or likely breach as they consider necessary.
     2. The parties must:
        1. to the extent permitted by law, provide each other with reasonable assistance in undertaking the investigations and, where relevant, remedying the breach; and
        2. if necessary, co-operate in amending this MOU to reflect new security requirements.
     3. Without limiting the terms of this MOU, the parties acknowledge that each party will be required to follow its own information security policies and procedures when dealing with an actual or likely security breach.

1. Retention and disposal of information
   1. Each party is responsible for complying with its own legal obligations relating to retention and disposal of information including, to the extent they apply:
      1. the Privacy Act’s IPP 9 (Agency not to keep personal information for longer than necessary);
      2. any other legislation that applies to a party or the Specified Information (if any); and
      3. the Public Records Act 2005.
2. Dispute resolution
   1. If either party becomes aware of a dispute relating to this MOU or its formation, that party will promptly advise the other party in writing of the dispute.
   2. The parties will use their best endeavours to resolve the dispute within 5 working days of the receiving party’s receipt of the notice referred to in clause 9.1.
   3. If the parties are unable to resolve the dispute within the 5 working days referred to in clause 9.2, either party may by notice in writing to the other party escalate the dispute.
   4. If a dispute is escalated under clause 9.3, the parties must:
      1. agree upon a written summary of the dispute, the issues involved, and the reason or reasons for the dispute not being resolved or, failing agreement on such a summary within 10 working days after the date of receipt of the notice of escalation, prepare separate written summaries within the next 5 working days; and
      2. submit the summary or summaries to each party’s chief executive or his or her nominated delegate within 15 working days after the date of receipt of the notice of escalation.
   5. The parties’ chief executives or their nominated delegates will meet as soon as practicable after their receipt of the summary or summaries to try to resolve the dispute.

1. Termination
   1. Either party (the **first party**) may terminate this MOU for cause, by written notice to the other party (the **second party**) with immediate effect on the date of termination specified in that notice, if:
      1. the **second party** commits a material breach of this MOU that is incapable of being remedied; or
      2. the **second party** commits a material breach of this MOU that is capable of being remedied, the **first party** has issued a written notice to the **second party** requiring it to be remedied, and the **second party** has not remedied the breach within 10 working days of its receipt of the notice.
   2. If the parties have been unable to resolve a dispute within 25 working days after the date of receipt of the notice of escalation referred to in clause 9.3, either party may terminate this MOU on written notice to the other party.
   3. Either party may terminate this MOU for convenience upon 30 days’ written notice to the other party or such other period (if any) specified in Schedule 1 (which will apply instead of the 30-day period).
   4. The parties may at any time agree in writing to terminate this MOU.
2. Relationship management
   1. Each party must nominate a representative (the **Authorised Representative**) who will be:
      1. responsible for monitoring that party’s compliance with this MOU; and
      2. the key contact person for:
         1. receiving notices issued under this MOU; and
         2. any other matters relevant to this MOU.
   2. The parties’ Authorised Representatives at the Start Date are specified in Schedule 1. A party may change its Authorised Representative at any time by written notice to the other party informing the other party of the change and the name and contact details of the replacement Authorised Representative.
3. Review
   1. The parties will review this MOU at least annually to check that:
      1. it is working as intended; and
      2. the safeguards prescribed by this MOU remain sufficient to protect the Specified Information against unauthorised access, use or disclosure.
   2. The parties will co-operate with each other during the course of each review and take all reasonable actions to make the required resources available.
4. General provisions
   1. **Preservation of rights and remedies**

Except as otherwise provided in this MOU, termination or expiry of this MOU will not affect:

* + 1. any right or remedy available to either party which has accrued up to and including the date of termination or expiry; and
    2. the provisions of this MOU that expressly, or by their nature, survive termination or expiry, including clauses 7 (Security of information), 8 (Retention and disposal of information), 9 (Dispute resolution), 13 (General provisions) and 14 (Definitions).
  1. **Costs**

A party who has an obligation to do anything under this MOU is to perform that obligation at its own cost, unless a term of this MOU expressly provides otherwise.

* 1. **Force Majeure Events**

Neither party will be liable to the other for any failure to perform its obligations under this MOU during the time and to the extent that such performance is wholly or substantially prevented by any Force Majeure Event, provided that it:

* + 1. notifies the other party of the Force Majeure Event as soon as practicable after it occurs and provides full information concerning the Force Majeure Event, including the extent of its inability to perform and an estimate of the time likely to be required to overcome it;
    2. uses all reasonable endeavours to remedy or mitigate the effect of the Force Majeure Event and minimise the impact on its obligations and the other party; and
    3. uses all reasonable endeavours to complete its obligations under this MOU as far as practicable.
  1. **Entire agreement**

This MOU constitutes the entire agreement of the parties with respect to its subject matter and supersedes all previous agreements, arrangements, understandings or representations relating to that subject matter.

* 1. **Amendment**

This MOU may only be amended by agreement in writing signed by authorised representatives of the parties.

* 1. **Counterparts**

This MOU may be executed in any number of counterparts, each of which is to be deemed an original, but all of which together are to constitute a single instrument.

1. Definitions and interpretation

Unless the context requires otherwise, the terms below have the meanings given to them:

**Authorised Representative** has the meaning in clause 11.1;

**Confidential Information** means:

* + 1. in relation to a party, all information concerning the party’s organisation, administration, operation, business, customers, clients, finances and methods that is by its nature confidential or which the recipient ought to know is confidential whether received before or after the commencement of this MOU; and
    2. all Specified Information;

**End Date** means the date on which this MOU will expire, subject to earlier termination under clause 10 or extension of the Term under clause 1.2;

**Force Majeure Event** means, in relation to either party (the **Affected Party**), an event or circumstance beyond the reasonable control of the Affected Party, including any fire, earthquake, storm, flood, volcanic eruption, landslide, strike, lockout or other industrial disturbance, explosion, terrorism, third party malicious act such as hacking, mains electrical supply failure or communications line failure, national emergency or unavoidable accident, but does not include any event that the Affected Party could have prevented or overcome by exercising reasonable care or a lack of funds for any reason;

**Information Regulator** means the Privacy Commissioner, Government Chief Privacy Officer, Government Chief Information Officer, the Government Communications Security Bureau and the Ombudsmen;

**IPP** means an Information Privacy Principle in section 22 of the Privacy Act 2020 and includes, where appropriate, the equivalent rule of any relevant Code of Practice;

**MOU** means this Memorandum of Understanding;

**OIA** means the Official Information Act 1982;

**Personal Information** means information about an identifiable individual;

**Personnel** means any employee, agent, or representative of the relevant party or any contractor of or provider of services to that party;

**Privacy Breach Guidelines** meansthe privacy and data breach guidance published by the Office of the Privacy Commissioner on its website (privacy.org.nz) and any statutory provision enacted after the Start Date that makes privacy breach notification by agencies mandatory;

**Specified Information** means the specific kinds of information that the parties agree may be shared in accordance with and subject to the terms of this MOU, as described in Schedule 1;

**Specified Purposes** means the specific purposes for which the Specified Information may be shared in accordance with and subject to the terms of this MOU, as described in Schedule 1; and

**Start Date** means the date on and from which the terms of this MOU apply, as specified in Schedule 1.

**Execution**

|  |  |
| --- | --- |
| **SIGNED** by [name] on behalf of the **Accident Compensation Corporation** | **SIGNED** by [insert full name of **second party**] |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Signature | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Signature |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Name |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Position | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Position |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Date | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  Date |

Schedule 1: MOU Details

1. Introduction
   1. This Schedule records specific details relating to the operation of this MOU as referred to in the body of the MOU.
2. Details

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Start Date  (Clause 1.1) |  | | | |
| End Date  (Clause 1.1) | The End Date of the Agreement between ACC and [**second party**] for [**name of service**] | | | |
| Legal effect of MOU  (Clause 1.3) | This MOU is intended to have effect as a memorandum of understanding that does not give rise to legally enforceable obligations. | | | |
| Objective of MOU  (Clause 2.1) | This MOU facilitates the sharing of the data (referred to as the Minimum Data Set) by way of the information data exchange. | | | |
| Specified Information and Specified Purposes  (Clauses 2.1 and 3.1) | The [**second party**] may share data listed in the Minimum Data Set with ACC in accordance with the Agreement between ACC and [**second party**] for [**name of service**] (see Appendix One: Minimum Data Set).  [Note: It is necessary to ensure that:  - there is an agreement between ACC and the relevant supplier; and  - that agreement includes a minimum data set.] | | | |
| Justification(s) for sharing  (Clause 4.1) | Under the [**....**] Agreement, [**second party**] is required to share data with ACC.  [**second party**] must ensure that it secures consent from patients to disclose information to ACC.  [**second party**] can use its own disclosure form or an ACC-supplied form (e.g. the ACC6300).  Disclosure of this information is permissible under IPP 11(2)(a) as it is directly related to one of the purposes for which the information is held. | | | |
| Consent or notice requirements where Specified Information used lawfully for an Other Purpose  (Clause 3.4) |  | | | |
| Additional security controls  (Clause 7.2(b)(iv)) | All information that would enable the identification of any person should be transmitted by secure encrypted channel or by password – protected document. | | | |
| Transmission of Specified Information beyond receiving party's secure systems and premises  (Clause 7.2(b)(v)) |  | | | |
| Termination for convenience period  (Clause 10.3) | This MoU may be terminated on three months written notice by either party | | | |
| Authorised Representatives  (Clause 11.2) | Authorised Representative for **ACC** | | Authorised Representative for [**second party**] | |
| Name: |  | Name: |  |
| Email: |  | Email: |  |
| Phone: |  | Phone: |  |
| Amendments |  | | | |
| Additional terms |  | | | |

Appendix One: Minimum Data Set

[insert minimum data set being supplied]