



TERMS AND CONDITIONS FOR CONDUCTING RESEARCH

The Agreement, consisting of these Terms and Conditions for Conducting Research together with the Completed Research Application, will be formed between the Researcher and the Department on the date when the Researcher submits the Research Application form with a properly completed Researcher's Declaration and continue for the Term. Where Permission to Approach or Final Approval is not granted, the Agreement automatically terminates on notification of this to the Researcher.

AGREED TERMS:

1. DEFINITIONS & INTERPRETATION

- 1.1 In these Terms and Conditions for Conducting Research, unless the context otherwise requires or the contrary intention appears, the following terms will have the meanings assigned to them:

Agreement – The Terms and Conditions for Conducting Research together with the Completed Research Application.

Blue Card – A card issued by Blue Card Services (Department of Justice and Attorney-General) to a person who holds a positive notice under the *Working with Children (Risk Management and Screening) Act 2000* (see section 220(a)).

Completed Research Application means a Research Application that has been completed by the Researcher and submitted to the Department.

Consequential Loss means loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.

Department – Queensland Government Department of Education.

Departmental Sites – Education-related facilities that are the responsibility of the Department. This includes but is not limited to state schools, outdoor and environmental education centres, some early childhood education services operated by the Department, central office, regional offices and websites operated by the Department.

Evidence Framework – The document of this name located at <https://qed.qld.gov.au/publications/management-and-frameworks/evidence-framework>. It is a Departmental framework that supports generation of better evidence and improves the rigour with which we examine evidence. The framework defines four sources of evidence that serve to strengthen our capacity to use, critique and generate evidence. These sources are: practice and innovation; evaluation; data and analysis; and Research.

Exemption Card – A card issued by Blue Card Services (Department of Justice and Attorney-General) to a person who holds a positive exemption notice under the *Working with Children (Risk Management and Screening) Act 2000* (see section 282).

Final Approval – The approval granted by the school principal and/or relevant work unit manager to conduct Research in their Departmental Site. Final Approval can only be sought where Permission to Approach has been granted by Research Services or the regional office, except where researchers are only seeking to conduct non-sensitive Research in a single school. Final Approval does not constitute ethics clearance, support for the Research or endorsement of the Research by the principal, school or the Department. Neither does it constitute support for the general or commercial use of an intervention, program or other enterprise that may be evaluated as part of the Research.

Guidelines for Conducting Research – The Department's guidelines located at <http://education.qld.gov.au/corporate/research/docs/research-guidelines.pdf> for all Researchers seeking to conduct Research in schools, Departmental Sites and with Departmental data. They provide information on the procedures and requirements of the Department with the aim of assisting Researchers in the preparation and completion of Research Applications and the ethical conduct of Research at Departmental Sites. They should be read prior to commencing a Research Application and should be read together with the Terms and Conditions for Conducting Research and Standards for Ethical Research Practice.

Harm – has the meaning given in the *Child Protection Act 1999* (Qld).

Human Research Ethics Committees (HREC) – Committees, often university-based, tasked with providing ethical oversight of Research by reviewing Research proposals that include human participants against relevant standards.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Agreement, but excludes Moral Rights.

Jurisdiction – The geographic territories defined by state and territory governments, comprising Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia.

Machinery of Government Change means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968 (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of the Agreement.

National Statement on Ethical Conduct in Human Research–The document located at <https://www.nhmrc.gov.au/guidelines-publications/e72> which is a statement prepared by the National Health and Medical Research Council (**NHMRC**) that guides the way Research with humans is conducted and managed, with emphasis placed on responsibilities and accountabilities of researchers.

Parent/Caregiver – A person with the legal authority to make decisions in relation to the long-term care, welfare and development of the child.

Permission to Approach – The permission sought from the Department (either through central office or a regional office) that grants Researchers permission to approach the school principal or work unit manager to request Final Approval to conduct Research.

Personal Information – Information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Publication – A document intended for public dissemination, in the form of academic papers, theses, reports, conference presentations, webinars or findings that will be made available online, in a library or in the media. Documents intended for Departmental access only, are deemed not to be publications.

Publicity – Includes any media release (including, without limitation, releases to radio, television, print and online media and social media), public statement, public announcement or similar.

Queensland Education Research Inventory (QERI) – An online portal with tools for making an application for conducting Research involving Departmental Sites and/or data, and a searchable inventory of that Research or any similar portal/tool which replace QERI.

Queensland Government Body means any of:

(a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);

(b) a body established by the State of Queensland through the Governor or a Minister; or

(c) an incorporated or unincorporated body over which the State of Queensland exercises control

Research – Creative and systematic work undertaken in order to increase the stock of knowledge – including knowledge of humankind, culture and society – and to devise new applications of available knowledge. For persons required to submit a Research Application to the Department, this will be the project outlined in Section 2 of the Research Application.

Researcher – A person/s seeking to undertake Research at Departmental Sites, including Research involving Departmental personnel, data and/or records. For persons required to submit a Research Application to the Department, this will be the representative named in Section 1 of the Research Application who is actively engaged in the Research and readily contactable.

Research Application – The QERI online application form, a previous application form entitled ‘Application for conducting research in Queensland Department of Education and Training’ or the ‘National Projects – Application to Conduct Research in Schools’ and any attachments to these forms.

Research Advertisement in Schools – An application that is submitted directly to the school principal and is used when a Researcher seeks to promote their study through a school newsletter advertisement or bulletin board notice and there is no involvement of the school in the Research or in recruiting participants.

Research Findings – Content required by the form in QERI for submitting the results of Research and evaluations involving Queensland state schools and other Departmental Sites and/or data. It contains provision for the inclusion of information on: the title of the research; content keywords; the location of the research, research questions, research methodology; a summary of major findings; research limitations; relationship with other research; additional research needed; practical implications; end-users likely to benefit from the research findings; value of the research; list of relevant publications; and Researcher's contact information.

Research Principles – The research principles as described in the Research Plan located at <http://education.qld.gov.au/corporate/research/docs/research-plan-2018.pdf>. They are the principles that inform the Department's Research activity and investment and ensure that anticipated benefits of Research are achieved and communicated, namely that the Research should be:

1. *Accessible* – Research outcomes and findings are available and disseminated widely. New knowledge is embedded in policy and replicated on a larger scale.
2. *Ethical* – Research is highly ethical and appropriate, and presents minimal risk and intrusiveness to participants or the department.
3. *Integrated and aligned* – Research addresses gaps in knowledge, aligns with priorities, and is of clear benefit to participants, schools, the department or broader Queensland population.
4. *Open and Collaborative* – Research is collaborative and involves an open, respectful relationship between all participants, researchers, and partners.
5. *Quality* – Research is well designed, purposeful and capable of producing sound results that are relevant to the research goals.

Sector – One of three administrative spheres of organisation providing primary and secondary education in Queensland, comprising state schools, independent schools, and Catholic schools.

Standards for Ethical Research Practice – The Department's document of this name located at <https://qed.qld.gov.au/publications/management-and-frameworks/evidence-framework/foundations-evidence/ethical-research-practice>. The Standards for Ethical Research Practice are one of the three foundations of the Evidence Framework, identifying the Department's core requirements of ethical practice design, delivery and reporting of Research involving its sites, students or employees. The standards apply to studies undertaken by Departmental staff or external Researchers at Departmental Sites, while recognising that the legislative responsibilities of internal and external researchers can differ.

Term means the period from formation of the Agreement until it is terminated in accordance with these Terms and Conditions.

Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research – The document located at <https://www.nhmrc.gov.au/guidelines-publications/e52> which are guidelines prepared by the National Health and Medical Research Council (NHMRC), in addition to the National Statement, about the consideration in the conception, design and conduct of appropriate research in Aboriginal and Torres Strait Islander communities.

2. OBLIGATIONS OF THE RESEARCHER

2.1 The Researcher must ensure that the Research:

- (a) complies with the National Statement on Ethical Conduct in Human Research;
 - (b) complies with the Guidelines for Conducting Research;
 - (c) adheres to the Standards for Ethical Research Practice;
 - (d) complies with the Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research;
- (e) accords with the Code of Conduct for the Queensland Public Service and the Department's Standard of Practice (located at <http://education.qld.gov.au/corporate/codeofconduct/>) and, for school-based Research, the Code of School Behaviour located at <http://behaviour.education.qld.gov.au/SiteCollectionDocuments/disciplinary-decisions/code-school-behaviour-a4.pdf>;
- (f) adheres to the Research Principles;
 - (g) complies with all relevant legislation; and
 - (h) is cleared by the Researcher's HREC and all relevant ethical committees or, where ethical clearance is not required, the Completed Research Application includes a statement setting out the ethical approach of the Research.
- 2.2 The Researcher must ensure that the information set out in the Completed Research Application is a true and accurate representation of the Research, Research design and Research processes.
- 2.3 The Researcher must notify the Department, in writing, of any amendments to their Research (including where any information provided was inaccurate or misleading), and/or any changes required by their institution's HREC, for the Department's approval before they proceed with the amendment. An amendment may include, but is not limited to, changes to the Research team, location of the Research, level of sensitivity or imposition associated with the Research, changes to data collection, additional Research undertaken with the data, or publication based on the data beyond what is normally associated with academic studies. Significant amendments will require the submission of a new Research Application.
- 2.4 The Researcher, and any other members of the research team, at the time of applying to conduct Research that involves entering school sites or interviewing minors must:
- (a) hold a valid Blue Card; or
 - (b) hold a valid Exemption Card; or
 - (c) supply evidence they are in the process of obtaining a Blue Card or Exemption Card (whichever is applicable); or
 - (d) have written confirmation from Blue Card Services (Department of Justice and Attorney-General) that they are exempt from the requirements of subsection (a) and (b) of this clause.
- 2.5 The Researcher, and any other members of the research team, prior to being given Final Approval and entering school sites or interviewing minors must:
- (a) hold a valid Blue Card; or

- (b) hold a valid Exemption Card; or
- (c) have written confirmation from Blue Card Services (Department of Justice and Attorney-General) that they are exempt from the requirements of subsection (a) and (b) of this clause.

2.6 When attending a Departmental Site, the Researcher must:

- (a) protect people and property and avoid any unnecessary interference with the Department or school's operations and activities and the passage of people and vehicles;
- (b) prevent unreasonable noise and disturbance; and
- (c) comply with all workplace health and safety policies applicable to the Departmental Site and comply with the reasonable requirements and directions of the school Principal or responsible Departmental officer (or their delegates) with regard to conduct, behaviour, safety and security.

2.7 Where the Researcher, during the course of Research, forms a reasonable suspicion that a student has suffered Harm, is suffering Harm, or is at risk of suffering Harm, the Researcher must disclose the suspected Harm or risk of Harm to the school principal or, where appropriate, the relevant site manager.

2.8 Where the Researcher is made aware during the course of Research of any criminal activity committed by a student, the Researcher must disclose this activity to the school principal or, where appropriate, the relevant site manager.

2.9 Where the Researcher is made aware during the course of the Research of any student mental health difficulties, or has a reasonable suspicion of mental health difficulties, the Researcher must refer the student to the school principal or, where appropriate, other relevant school personnel or relevant site manager.

3. CONSENT

3.1 The Researcher must ensure it obtains written specific, informed, current and voluntary consent in relation to the participation of individuals in the Research. In particular:

- (a) where the Research participant is an adult (over the age of 18 years) – consent must be obtained from the Research participant, provided the Research participant has the capacity to give informed consent (i.e. is Gillick competent);
- (b) where the Research participant is an adult and unable to give informed consent (i.e. lacks capacity) - consent must be obtained from a person or body with legal authority to make decisions for the Research participant;
- (c) where the Research participant is a child (under the age of 18 years) - consent must be obtained from a person who meets the definition of Parent/Caregiver (namely a person with the legal authority to make decisions in relation to the long-term care, welfare and development of the child) unless it would be inappropriate in the circumstances to obtain the written consent of a parent (e.g. it may be inappropriate to obtain the written consent of the Parent/Caregiver if the Research participant is living independently of his or her Parent/Caregiver); and

- (d) where the Research participant is a child and it is inappropriate in the circumstances to require the written consent of a Parent/Caregiver as referred to in clause 3(c) – consent must be obtained from the Research participant, provided the Research participant has the capacity to give informed consent (i.e. is Gillick competent).

3.2 The Department may provide template consent forms and other documentation to the Researcher, but the Researcher remains solely responsible for ensuring any consents are sufficient and compliant with all relevant laws and ethical standards.

4. PRIVACY AND RIGHT TO INFORMATION

4.1 Where a Researcher collects, holds or has access to Personal Information to conduct the Research, the Researcher must:

- (a) ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
- (b) not use Personal Information other than for the purposes of the Research, unless required by Law;
- (c) not disclose Personal Information without the written permission of the Department, unless required by Law;
- (d) not transfer any Personal Information outside of Australia, except with the prior written permission of the Department;
- (e) ensure that only the personnel listed in the Researcher's Completed Research Application and approved by the Department have access to Personal Information, and ensure that these personnel are aware of the Researcher's obligations under this clause and comply with the same obligations imposed on the Researcher under this clause;
- (f) fully cooperate with the Department to enable the Department to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (g) immediately notify the Department if they become aware that a disclosure of Personal Information is, or may be required by law and if they become aware there has been a disclosure of Personal Information in breach of this Agreement; and
- (h) comply with other privacy and security measures that the Department may reasonably advise the Researcher of in writing from time to time.

4.2 Researchers and their institutions must respect the privacy, confidentiality and cultural sensitivities of the participants and, where relevant, of their communities.

4.3 The Researcher is bound by, and must at all times comply with, the Information Privacy Act 2009 as if it were the Department. Where there is any inconsistency in the Researcher's obligations under this clause and at law, the Researcher must comply with whichever regime imposes the higher standard.

4.4 The Department is subject to obligations under the *Right to Information Act 2009*. Information provided by the Researcher to the Department may be the subject of an application under this Act, or some other lawful process requiring the Department to produce or disclose the information. The Researcher should identify if this is an issue in the Completed Research Application, but the Department cannot guarantee that the information will not be disclosed.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 The Department does not transfer any rights of ownership of any Departmental data through the provision of Permission to Approach or Final Approval.

5.2 The Department grants the Researcher a licence to use the data collected as part of the research project only for the purpose set out in the Completed Research Application and period of the Research. Any other purposes require the prior written consent of the Department (which may be given or withheld in its absolute discretion). The Researcher must ensure that any other person that has access to the data through the Research only uses it for the purpose set out in this clause 5.2.

5.3 The Researcher grants the Department a licence to exercise all Intellectual Property Rights in (a) the Research Findings and (b) the Completed Research Application, for any purpose of the Department or the State of Queensland, including the purposes of publication on QERI in accordance with the Guidelines for Conducting Research and for the Department's internal assessment and record keeping purposes.

5.4 The Researcher warrants that the Completed Research Application, the Research the Research Findings, and any Publication will not infringe the Intellectual Property Rights or Moral Rights of, or misuse the confidential information or personal information of, any third party.

5.5 The Researcher warrants that the Researcher has obtained an unconditional, genuinely given, irrevocable written Moral Rights consent from each individual author involved in the Research, including consent to use in accordance with the licence under clause 5.3.

6. RESEARCH FINDINGS

6.1 The Researcher must provide a summary of the Research Findings, using a format, language and concepts that are non-technical, to:

(a) participants, unless it would be inappropriate in the circumstances to provide the summary to the participant (for example, it may be inappropriate to provide a summary of the Research Findings to a child participant who does not have sufficient maturity/capacity to understand the Research Findings); and

(b) the school and/or other Departmental Sites.

6.2 The Researcher must provide the Research Findings to the Department, using the template provided by the Department, for consideration and comment.

6.3 The Department may publish the Research Findings on QERI where the Researcher has provided its consent in QERI.

6.4 The Department reserves the right not to publish the Research Findings on QERI.

7. PUBLICATIONS

- 7.1 The Researcher must provide the Department with a draft copy of any Publication relating to their findings, for comment and consideration, at least three weeks prior to publication.
- 7.2 The Department retains the right to request reasonable amendments or alterations be made to a Publication prior to publication, and the Researcher agrees to make those amendments or alterations.
- 7.3 The Department also reserves the right to require that a Publication is not published, made public or advertised in any way and the Researcher must comply with such a request.
- 7.4 The Department retains the right to require the Researcher to reasonably acknowledge the assistance of the Department in all Publications relating to the Research.
- 7.5 The Researcher must ensure that any Publication arising from the Research which clearly identifies the participation of the Department, carries a disclaimer to the effect that it does not necessarily represent the views of the Department and, in a way that is sensitive and respectful of cultural, religious and other differences amongst Research participants.
- 7.6 The Researcher must ensure that under no circumstances do any Publications arising from the Research disclose the names of Research participants or schools, unless:
- (a) where participants names will be disclosed, prior written consent has been obtained in respect of all Research Participants. The requirements for consent are as outlined in clause 3.; or
 - (b) where the school names will be disclosed, prior written agreement has been obtained from the school principals (and unless agreement has been obtained under clause 7.6(a), no participant is identifiable).

8. COMPARATIVE STATEMENTS

- 8.1 The Researcher must ensure that comparative statements regarding Queensland Departmental Sites (including the Department's policies, programs and data) and other Sectors, home schooling or Jurisdictions (both Australian and overseas) are not included in Publications and Publicity arising from the Research, unless prior written agreement has been obtained from the Department.

9. QUEENSLAND GOVERNMENT LOGO

- 9.1 The Researcher must obtain written consent from the Department for any use of the Department or Queensland Government logo.

10. PUBLICITY

- 10.1 The Researcher must inform the Department's Media Team at media@qed.qld.gov.au if the media contacts them about Research activities conducted:
- (a) at Departmental Sites;
 - (b) where Departmental staff or students are Research participants; or
 - (c) using Departmental, school, staff or student data not already in the public domain.

- 10.2 The Researcher must inform the Department if they, or their employer or institution, intend to issue or participate in Publicity regarding their Research, and provide the Department with a copy of the proposed Publicity for review, at least one week prior to its release.
- 10.3 The Department also reserves the right to require that particular Publicity is not published, made public or advertised in any way and the Researcher must comply with such a request.
- 10.4 Where the proposed Publicity involves interviews or statements that can be attributed to state schools, or includes the name of or identifies a state school, the Researcher must obtain permission from the school principal or site manager.
- 10.5 Where Publicity is proposed to occur at Departmental Sites, the Researcher must obtain permission from the Department's media team, Research Services and the relevant school principal or site manager.
- 10.6 Where Publicity is proposed to include interviews, photos and/or video or audio footage of school students, the Researcher must obtain consent in respect of each student. The requirements for consent are as outlined in clause 3.

11. BREACH OF THE AGREEMENT

- 11.1 A breach of the Agreement occurs if any of the following events occur:
- (a) the Researcher fails to comply with any provision within the Agreement;
 - (b) the Researcher amends any part of the Research design without obtaining approval from the Department;
 - (c) the Researcher fails to comply with any of their legislative obligations;
 - (d) the Researcher fails to comply with the terms of the clearance provided by a HREC; or
 - (e) in the Department's opinion, the Researcher brings the Department or the State Government into disrepute.
- 11.2 Where the Department is made aware of, or reasonably suspects, a breach of the Agreement under clause 11.1, the Department may suspend or vary the Research or the Agreement in order to conduct an investigation of this matter.
- 11.3 The Department must inform the Researcher in writing of any decision to suspend or vary the Research or the Agreement under clause 11.2. The Researcher must immediately comply with any requirement to suspend the Research.

12. TERMINATION

- 12.1 The Department may terminate the Agreement for a breach established under clause 11.1, whether or not the Department has suspended or varied under clause 11.2. The Department may, but is not required to, provide the Researcher with an opportunity to remedy the breach prior to termination.
- 12.2 Upon termination under clause 12.1 or clause 12.4 the Department's permission for the Research to occur is immediately revoked.
- 12.3 Where the Agreement is terminated under clause 12.1, the Department also:

- (a) reserves the right to refuse any future Research Application or Research Advertisement in Schools application made by the Researcher;
 - (b) may inform the Researcher's employer or institution, HREC, or other relevant body of the termination of the Agreement; and
 - (c) may inform comparable departmental research units in other Jurisdictions and Sectors of the Researcher's actions.
- 12.4 Notwithstanding clause 12.1, the Department retains the discretion to terminate the Agreement at any time, without cause.
- 12.5 The Department must inform the Researcher in writing of a decision to terminate the Agreement.

13. WARRANTY, LIABILITY AND INDEMNITY

- 13.1 The Researcher warrants that all information provided by the Researcher to the Department (including any information in the Completed Research Application) is accurate and not misleading in any way (including through any omission).
- 13.2 The Researcher carries out the Research entirely at their own risk and cost and the Department will not be liable for any claim, suit, demand, action or proceeding brought against the Researcher as a result of carrying out the Research.
- 13.3 To the extent permitted by law, the Department excludes all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages and costs the Researcher may sustain arising from conduct of the Research and the Department's permission. The Department will not be liable to the Researcher for any Consequential Loss.
- 13.4 The Researcher must release and indemnify (and keep indemnified) the Department (to the full extent permitted by any law) against any claim, suit, demand, action or proceeding that may be brought against the Department, which arises directly or indirectly as a result of:
- (a) any breach of the Agreement by the Researcher; or
 - (b) any negligent or unlawful act or omission by the Researcher in relation to the Researcher's performance of the Research; or
 - (c) any infringement (or alleged infringement) of Intellectual Property Rights by the Researcher in the course of, or incidental to, undertaking the Research.
- 13.5 The indemnity referred to in clause 13.4 shall survive the expiration or termination of the Agreement.

14. INSURANCE

- 14.1 The Researcher must ensure that the Researcher's employer or institution effects and maintains the following insurances:
- (a) public liability insurance for the amount of \$10,000,000 per occurrence;

- (b) workers' compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2004* (Qld.); and
- (c) professional indemnity insurance for the amount of \$10,000,000 covering the Researcher and the other members of the research team.

Upon receipt of written request in writing, the Researcher must produce evidence (by way of certificates of currency) to the Department that the insurances required by this clause have been effected and maintained.

14.2 The Department may require additional or different insurances determined necessary as part of its assessment of a Completed Research Application.

15. SURVIVAL

15.1 Clauses 4, 5, 9, 12 and 13 survive termination of the Agreement.

16. ASSIGNMENT

16.1 The Department may assign, transfer or novate any of its rights or obligations under the Agreement

- (a) with the Researcher's prior written consent; or
- (b) on written notice to the Researcher, in connection with a Machinery of Government Change.

17. NOTICES

17.1 The Researcher must send any notices in relation to the Agreement to the Department to Research Services at ResearchServices@qed.qld.gov.au.

18. INTERPRETATION

18.1 Unless it is expressly stated that a different rule of interpretation will apply:

- (a) headings are provided for convenience and do not affect the interpretation of the documents making up the Agreement;
- (b) "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (c) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
- (d) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
- (e) if any part of the Agreement is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Agreement will not apply but the other parts of the Agreement will not be affected.