

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Agreement is made on the _____ day of _____ 20__

Parties

1. **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through the **Commissioner of Police ("Police")**
2. **[COMPANY NAME], [NZBN NUMBER]**, a duly incorporated company having its registered office at **[COMPANY ADDRESS]** ("**Recipient**")

Background

1. The Next Generation Critical Communications Lead Entity and Crown Infrastructure Partners (together the "**NGCC Lead Agencies**") are working together on the Public Safety Network Programme ("**PSN Programme**") to replace the existing emergency services communications network with modern communications capability.
2. As part of the PSN Programme, the NGCC Lead Agencies have asked Police to provide to the Recipient certain information about network sites that Police owns or operates within New Zealand and certain data relating to the other Participating Agencies' emergency services' incident responses ("**Specified Information**").
3. Police will provide certain Specified Information (including from the other Participating Agencies) to the Recipient as Police sees fit. However, the Participating Agencies consider the Specified Information to be Confidential Information, so in consideration of the provision of the Specified Information to the Recipient, the Recipient agrees to keep the Specified Information confidential in accordance with the terms of this Agreement.

Definitions

4. In this Agreement, the following terms shall (unless the context otherwise requires) have the following meanings:

'**Agreement**' means this confidentiality and non-disclosure agreement and includes any schedules to this agreement, which the parties may agree in writing from time to time.

'**Confidential Information**' means any and all information relating to any and all personnel, assets and property (including the locations and specifications of the assets and property), policies, business strategies, plans, ideas, know how, concepts, data, technologies, equipment, methodologies, reports, documents, processes, photographs, designs, diagrams, maps, network site information, and other information whether of a business, financial, technical, non-technical or other nature, and whether existing in tangible form, electronic form or otherwise, and includes information provided verbally, which is made available by or on behalf of Police (including on behalf of the other Participating Agencies) to the Recipient at any time, including, without limitation:

- a. all information identified as confidential information in this Agreement, including the Specified Information; and
- b. all information which is either marked or stated to be confidential or is by its nature reasonably intended by Police to be confidential;
- c. all information that is derived from the foregoing information; and
- d. any information which is made available by or on behalf of, or otherwise relates to or is about, any of the Participating Agencies.

'Participating Agencies' means, together, Police, the Order of St John, Fire and Emergency New Zealand, Wellington Free Ambulance and the other emergency services providers in New Zealand.

'Permitted Purpose' means solely in order to respond to the requirements of the NGCC Lead Agencies for the purposes of the PSN Programme. The Confidential Information must not be reproduced directly in any such response, and must not be identifiable from the response.

'Representative(s)' means such employees, contractors, advisers and other third parties to whom the Recipient or any Representative discloses any Confidential Information.

Disclosure and Use

5. The Recipient will keep, and procure that its Representatives will keep, all Confidential Information (and the existence of such Confidential Information) strictly secret and confidential and shall use the Confidential Information only for the Permitted Purpose. For the avoidance of doubt, the Recipient shall not at any time:
 - a. cause, or permit the Confidential Information to be used for any purpose other than the Permitted Purpose; or
 - b. copy, convert, or translate any documents or materials containing Confidential Information, or merge the Confidential Information with any other information, without the prior written consent of Police (including on behalf of the other Participating Agencies) in each instance; or
 - c. remove, obliterate, or obscure any notices indicating that Confidential Information is secret or confidential; or
 - d. use any Confidential Information in a manner which the Recipient knows or ought reasonably to know is, or may be, detrimental to the best interests of any Participating Agency.
6. The Recipient will not directly or indirectly disclose the Confidential Information, or permit the Confidential Information to be disclosed, to any person at any time except:
 - a. to those Representatives who genuinely require the Confidential Information in order to carry out the Permitted Purpose, provided that any such recipient of the Confidential Information must agree in writing to be bound by obligations of confidentiality that are substantially identical to the obligations of confidentiality contained in this Agreement prior to such disclosure;
 - b. to the NGCC Lead Agencies strictly in accordance with the instructions of the NGCC Lead Agencies; and
 - c. as required by law provided that the Recipient immediately notifies Police (including on behalf of the other Participating Agencies) in writing of the requirement for disclosure (including any details about the requirement, as sought by Police); and has secondly, assisted Police and/or any other Participating Agencies notified to the Recipient by Police in obtaining a confidentiality order or similar protection limiting the extent of disclosure and/or the persons to whom and the manner in which the disclosure of the Confidential Information is made; and
 - d. with Police's prior written consent in each particular case, including on behalf of the other Participating Agencies.
7. The Recipient will, and will procure that its Representatives will:
 - a. at all times effect and maintain adequate security measures to preserve the confidentiality of the Confidential Information that it holds; and
 - b. promptly notify Police if the Recipient reasonably suspects, or becomes aware of a breach, potential breach, or threatened breach of any provision of this Agreement, including any unauthorised access, use, storage, copying or disclosure of any Confidential Information disclosed to it or to any of the Representatives; and
 - c. take all steps reasonably required by Police to prevent or stop any breach of this Agreement.

8. In the event that the Recipient receives any information requests, the Recipient will pass those requests on immediately to Police to deal with in accordance with the Privacy Act 2020 or the Official Information Act 1982, as appropriate.
9. The Recipient will remain responsible and fully liable for any act, default or omission of any third party (including but not limited to the Representatives) to whom Confidential Information is or may be disclosed or made available by the Recipient. This provision does not limit the Recipient's other obligations under this Agreement.
10. For the purposes of this Agreement, any act or omission by any Representative shall be deemed to be an act or omission of the Recipient regardless of whether or not such person was acting within the scope of their authority.

Destruction of Confidential Information

11. The Recipient shall, within 30 days of notification from Police, destroy, or procure the destruction of, any and all copies (including, without limitation, the same in electronic or other non-written form) of the Confidential Information and originals and copies of written summaries describing or incorporating the Confidential Information and certify in writing to Police that the Recipient has complied.

Ownership

12. The Confidential Information is provided to the Recipient on a non-exclusive basis.
13. The Recipient acknowledges and agrees that all Confidential Information is the sole and exclusive property of the relevant Participating Agency and the Recipient has no right to use the Confidential Information except for the Permitted Purpose or as otherwise permitted by this Agreement.

Remedies

14. The Recipient acknowledges that the disclosure of Confidential Information to any person not authorised to receive such Confidential Information would cause irreparable damage to the Participating Agencies for which monetary damages would not be an adequate remedy. Accordingly, a Participating Agency may seek and obtain injunctive relief or other equitable relief against the breach or threatened breach of this Agreement in addition to any other available remedies.
15. The Recipient acknowledges and agrees that the provisions of this Agreement are fair and reasonable in every respect and are necessary to protect the business, financial and other interests of the Participating Agencies.

Indemnity, Warranty and Disclaimer

16. The Recipient shall defend, indemnify and hold harmless the Participating Agencies and their respective officers, employees, and agents, and any other New Zealand Government agency, from and against any and all damage, loss, cost, liability, tax, and expense whatsoever (including lawyer's fees, all and any actual court costs, witness fees and expenses and all disbursements) incurred by reason of any failure by the Recipient and/or the Representatives to perform any covenant or agreement in this Agreement, any breach by the Recipient and/or the Representatives of any representation, covenant or agreement in this Agreement, or the negligence or wrongful act or omission of the Recipient or persons for whom the Recipient is responsible (including without limitation, its Representatives).
17. The Recipient receives and uses the Confidential Information at its own risk. None of the Participating Agencies gives any warranty or representation that the Confidential Information provided will be accurate, complete, current, or fit for a particular purpose, including the Permitted Purpose.
18. Notwithstanding clause 16, no Participating Agency will be liable for any damages or losses arising out of the use of Confidential Information disclosed by it pursuant to this Agreement no matter how such damages or losses may arise.

Disputes

19. Subject to clause 14, in the event of any breach of this Agreement, Police (including on behalf of the other Participating Agencies) and the Recipient will seek to resolve any dispute amongst themselves in the first instance. If agreement cannot be reached the parties will engage an agreed mediator in an additional attempt to resolve the dispute before undertaking any legal action.

Indefinite Term

20. This Agreement shall continue in force without any time limit unless agreed otherwise in writing between the parties in relation to specific Confidential Information.

General

21. **Rights of third parties:**
- a. Subject to clause 21.b, nothing in this agreement is intended to confer a benefit upon any third party whether under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 or otherwise.
 - b. The Recipient acknowledges and agrees that for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017, each of the Participating Agencies will be entitled to enforce against the Recipient clauses 13, 14, 16, 17, 18 and 19.
22. **Entire Agreement:** This Agreement sets out the entire agreement and understanding between the parties as to the subject matter of this Agreement and supersedes all prior discussions, commitments, agreements, arrangements, and understandings of any nature between the parties relating to the subject matter of this Agreement. This Agreement may only be amended, superseded, or cancelled by written agreement signed by the parties.
23. **Relationship of Parties:** Nothing in this Agreement shall constitute a joint venture, employment contract, partnership, or any other business, financial, or other relationship between the parties, including as between Police and the other Participating Agencies.
24. **Waiver:** The failure of any party at any time to insist upon strict performance of any obligation or provision contained in this Agreement shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of that same obligation or provision at a future time.
25. **Severability:** If any provision of this Agreement is held to be invalid or unenforceable then such provision will be severed from this Agreement, and all remaining provisions shall remain in full force and effect.
26. **Counterparts:** This Agreement may be executed in counterparts, each of which when executed will be deemed to be an original, and such counterparts together will constitute one and the same document.
27. **Governing Law:** This Agreement shall be governed by, and construed in accordance with, the laws of New Zealand. The parties agree that the courts of New Zealand shall have non-exclusive jurisdiction to hear any dispute in relation to this Agreement and that the courts of New Zealand are a convenient forum for this purpose.

Execution

Signed for and on behalf of
**HER MAJESTY THE QUEEN IN RIGHT OF
NEW ZEALAND** acting by and through the
Commissioner of Police or his or her
authorised delegate:

Signed for and on behalf of
COMPANY NAME:

Signature

Name:

Position:

Date:

Signature

Name:

Position:

Date: