

# Guidance: Privacy Commissioner's Model Contract Clauses Agreement for IPP 12 Cross-border Privacy Transfers

## When should I use the Model Contract Clauses Agreement?

The Model Contract Clauses Agreement ("Model Agreement") has been created to help agencies comply with [Information Privacy Principle 12](#) ("IPP 12") of the Privacy Act 2020 when they disclose personal information to a foreign person or entity.

IPP 12 requires agencies to ensure that personal information transferred overseas will be subject to comparable safeguards to those that apply under the Privacy Act. One way of complying with IPP 12 is to have a contract with the foreign person or entity receiving the personal information, requiring that recipient to protect the information in a way that is comparable to what would be required under the Privacy Act.

If you're an agency transferring personal information overseas, you may want to use the Model Agreement if:

- the recipient will use the information for its own purposes (you don't need to use the Model Agreement if the recipient will only use the information as your agent),
- it's unlikely that [another exception in IPP 12](#) applies (e.g. you may not need the Model Agreement if you reasonably believe the recipient is subject to the Privacy Act or a foreign law that provides comparable safeguards for the personal information being transferred).

Keep in mind, you will need to have a reasonable basis to believe that the Model Agreement will provide comparable safeguards to the Privacy Act. This means you may not be able to rely on the Model Agreement where the transfer is to a country that does not have a fair, reliable and accessible court system allowing enforcement of the Model Agreement, or a country that has other laws that would undermine the privacy protections in the Model Agreement.

You can use the **flow chart** at the end of this document (Appendix 1) to help decide whether you need to use the Model Agreement.

## Who is the Model Agreement designed for?

The Model Agreement is designed for use by small-medium enterprises, and others who might find it challenging to navigate the legal requirements of cross-border data transfers.

Using the Model Agreement can also help save you time and cost where you engage a lawyer or other privacy professional to help you finalise the details.

You can modify the Model Agreement – there is no requirement to use them "as is". However, be mindful that your agency will still need to believe on reasonable grounds that the foreign person or entity is required to protect the information in a way that provides comparable safeguards to those in the New Zealand Privacy Act.

The Model Agreement is a template, and will not necessarily anticipate all aspects of your particular situation. **It does not constitute legal advice.** By itself, the Model Agreement cannot guarantee compliance with IPP 12, but it will deliver much better results than most "DIY" efforts.

## How do I complete the Agreement?

This Model Agreement is made up of the Details in Part 1, and the General Terms in Part 2 (Appendix 2 in this document).

The Details in Part 1 are for you to fill out. It may take a bit of thought to get the Details right. This is all part of ensuring your business or organisation has the right privacy settings in place. But if you follow the step-by-step instructions you should be done in no time.

The General Terms in Part 2 are standard legal clauses designed to work with the Details filled out in Part 1. You should read the General Terms to make sure you understand them, but there is nothing you need to fill out. The parties can agree additions and modifications to the General Terms, but keep in mind that any changes that undermine the protections provided by the standard template version of this document may affect the Discloser's ability to comply with IPP12 of the Privacy Act.

You can use the [online agreement builder](#) on the Privacy Commissioner's website to generate a pdf version of the Model Agreement, or you can create one using the Privacy Commissioner's [Microsoft Word template](#). For the Details in Part 1, some of the terms are required (as in you must have them in your agreement) whilst others are optional (as in you would only include them if they apply). The online agreement builder identifies for you what you must complete in the Part 1 Details, and what is optional.

### 1. **When does the agreement start?**

You can nominate a Start Date which is before, on, or after the date on which the parties sign the agreement.

If you choose a date which is earlier than the date of signing, the agreement will apply as if it had been signed on the Start Date. This means that the agreement can apply to disclosures of personal information already made to the Recipient prior to the agreement being signed.

Note that the agreement ends when a party terminates it, but for so long as the Recipient continues to hold information that was transferred while the Agreement was in force, the Recipient will need to keep complying with the terms until all the information has been securely destroyed or deleted.

### 2. **Who are the parties?**

Enter the legal names of each party as the Discloser or Recipient. If you can, provide any other helpful identifying details e.g. NZBN, company number or registered address.

The Discloser will be the party sending the information, while the Recipient will be the offshore party receiving it.

The [New Zealand Business Number \(NZBN\)](#) is a unique identifier available to every New Zealand business, whether self-employed, a government agency, or a corporate organisation. You can use it to help identify your business. If your organisation is a company, you can also look up the company's details (NZBN, incorporation number and registered office address) on the [Companies Office website](#).

We recommend using the following format in the case of a company: *[insert full legal name], a company incorporated in [insert jurisdiction] (company number OR NZBN [insert]), having its registered office address at [insert].*

### 3. **Are there any other agreements related to the transfer?**

If the transfer of information is part of an existing commercial agreement(s) between the Discloser and the Recipient, you can list the agreement(s) under the "Related Agreements" heading (e.g. [title of agreement] dated on or about [date of agreement]). Otherwise, you don't need to add anything.

The General Terms state that the agreement will take priority over all other agreements listed in this section but you can specify otherwise in the “Special Terms” section further on.

**4. *What information is being transferred?***

Provide details under the “Transferred Information” heading.

This is important because it defines what information is protected under the terms of the agreement, so try to be as accurate as you can when describing what information will be protected

If you are transferring very different sets of information to the Recipient, and you want different rules to apply to each set, consider creating a separate agreement for each set.

**5. *How is the Recipient allowed to use the information?***

Provide details under the “Permitted Uses” heading.

Set out the permitted uses in a manner that is broad enough to capture all the uses the Recipient will need to use the information for, but not so broad as to allow the information to be used for purposes that were not initially intended by the individual.

In this section, you should:

- refer to the uses that the individual was informed about at the time of collection of their personal information (see [information privacy principle 3](#) of the Privacy Act); and
- ensure that all uses of personal information are permitted under the Privacy Act.

You can also refer to the list of permitted uses in [information privacy principle 10](#) of the Privacy Act and include them as appropriate.

You can also tick a box to allow the Recipient to use the information for other uses that are related to the ones you list out.

**6. *How is the Recipient allowed to share the information?***

Provide details under the “Permitted Disclosures” heading.

This section specifies how and when the Recipient can disclose the transferred information to third parties. Here, you can specify that the information can only be used for certain purposes and/or under certain conditions.

In this section, you should:

- refer to the disclosures that the individual was informed about at the time of collection of their personal information (see [information privacy principle 3](#) of the Privacy Act); and
- ensure that all disclosures of personal information are permitted under the Privacy Act.

You can also refer to the list of permitted disclosures in [information privacy principle 11](#) of the Act and include them as appropriate.

**7. *How should the Recipient secure the information?***

The agreement requires the Recipient to implement best practice safeguards for the information.

What is best practice (e.g. whether encryption is required) will depend on the circumstances, for example the sector you are in and the type of information being shared. If required, you can add further specific requirements under the “Security” heading.

If you are transferring especially sensitive information, you can likewise specify any additional precautions under the “Sensitive Information” heading. Under the agreement, the Recipient acknowledges that any failure to protect this sensitive information is particularly likely to cause harm to individuals.

**8. Who should notify individuals affected by a privacy breach?**

This section specifies who is responsible for notifying individuals affected by, or advising the Privacy Commissioner of, a **notifiable privacy breach**. The term “notifiable privacy breach” is defined in the General Terms. By default, the Recipient is responsible for notifying, but you can make the Discloser responsible by changing the wording under the “Privacy Breach Notification” heading.

Clause 3 of the General Terms sets out what the parties must do in the event of a notifiable privacy breach. You can also refer to our [general guidance](#) about notifiable privacy breaches.

**9. Are there specific events affecting when the information should be deleted?**

If there is a particular date or event by which the Recipient should delete/destroy the information, you can enter that information under the “Deletion” heading.

Otherwise, the default position in the General Terms will apply and the Recipient must delete/destroy the information once it is no longer reasonably required for any permitted use.

**10. What local data law(s) apply to the Recipient?**

Specify under the “Local Data Law” heading the local data protection/privacy laws the Recipient must comply with in their home country when the Recipient receives the personal information (ref. clauses 3.3, 5.2 and 5.4 of the General Terms).

However, if a requirement of local data laws is less protective than the protections found in the agreement, the Recipient will have to comply with the terms of the agreement because they will provide more protection to the transferred information and the interests of relevant individuals.

If you do not know what the applicable laws are, leave this section blank for now and ask the Recipient to list the applicable laws when they sign the agreement. The agreement also requires the Recipient to undertake to notify the Discloser as soon as reasonably practicable after any new applicable law is enacted. A Recipient’s notification of a local data law forms part of the agreement.

**11. Should the parties be able to terminate without a specific reason?**

Under the “Termination” heading, you can choose to give either party the right to terminate at any time and for any reason. You can tick the relevant box(es) and specify how much advance notice is required before the agreement will terminate without having to give a reason.

The General Terms in the agreement allow each party to terminate for the other’s persistent or material breach, and the Discloser can also terminate for particular events that may mean the agreement no longer ensures proper protection of the transferred information (see clause 7 of the General Terms for more information).

Under the “Consequences of Termination” heading, you can specify if termination also terminates any related agreement(s), and whether the Recipient is required to delete/destroy the transferred information. (If the Recipient continues to hold information that was transferred to them while the agreement was in force, the Recipient still needs to comply with the terms of the agreement until all the information has been securely destroyed or deleted.) You can skip these options if none of them apply.

**12. Where should notices be sent?**

Enter the notice addresses for each party under the heading titled “Details for giving notice under the Agreement”. Each party should enter the contact details of the person who is most likely to deal with the subject matter of the agreement (this can be, for example, an organisation’s privacy officer). These addresses will apply for service of legal claims too.

**13. *Are there any special terms?***

If you need to add any special terms to add to, modify or override the terms of the agreement, you can add those under the “Special Terms” heading.

Make sure that any special terms do not undermine the privacy safeguards in the Model Agreement such that you no longer comply with IPP12.

[Examples of a completed Model Agreement](#) can be found on the Privacy Commissioner’s website.

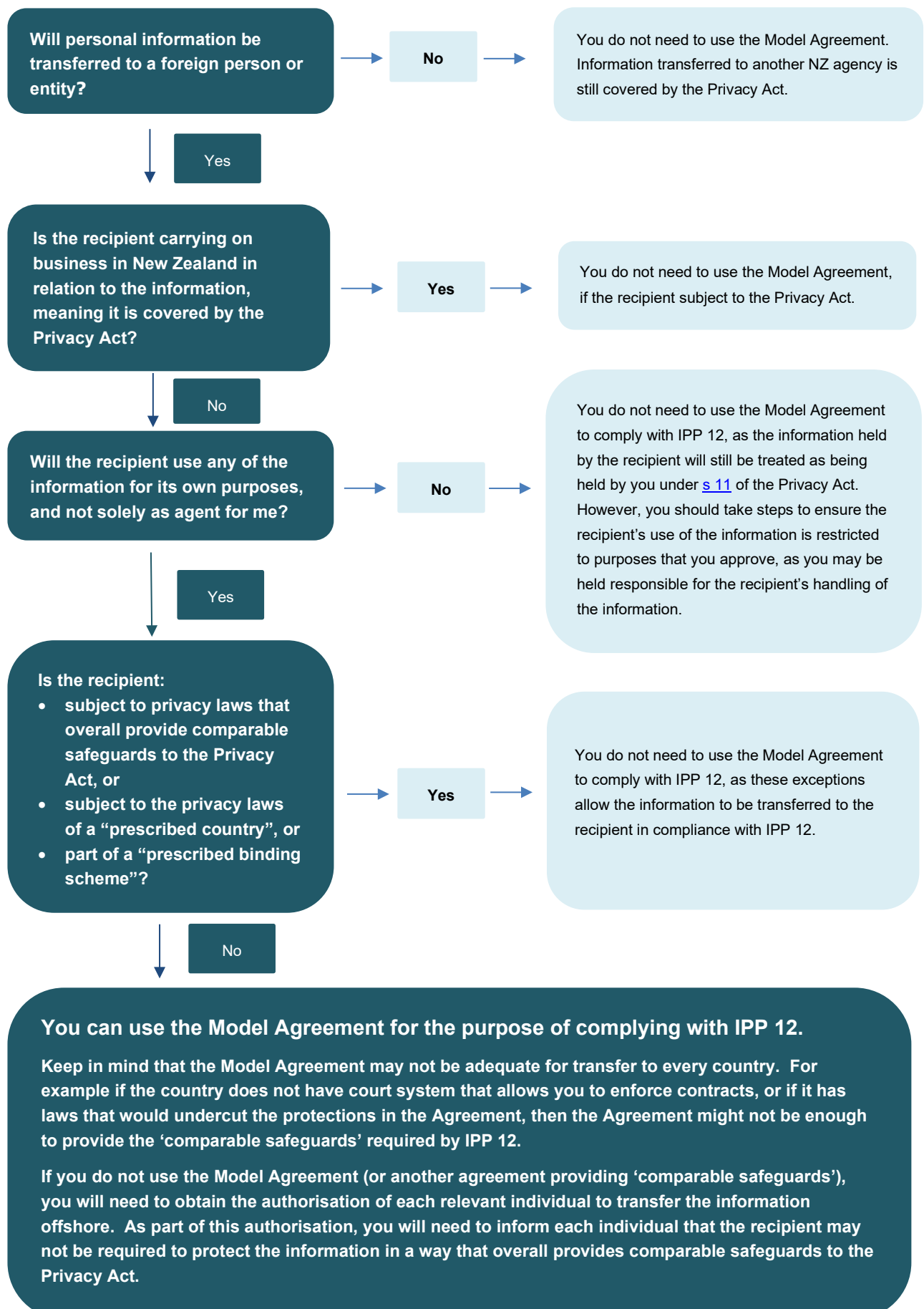
## What does the rest of the Model Agreement say?

The “General Terms” in Part 2 of the Model Agreement (see Appendix 2) sets out the parties’ key rights and obligations in relation to the transferred information. At a high level, these include the terms set out below.

High level summary	Clause
<b>Recipient’s key obligations</b>	
Only collect the information as reasonably necessary, to do this fairly and lawfully, and to only use and disclose the information as permitted in the Details	1.1, 1.2
Maintain best practice safeguards against the loss or unauthorised use, disclosure or destruction of the information, and any additional safeguards in the Details (including for any specified sensitive information)	1.3, 1.6
Take reasonable steps to ensure the information is accurate before using it	1.4
Destroy the information when it is no longer reasonably required for the permitted use(s), by any “deletion event/date” specified in the Details	1.5
Have a privacy officer to check the agreement is being complied with	1.7
Ensure third parties using the information as agent for the Recipient take all reasonable endeavours to protect the information, and their actions are treated as those of the Recipient	2.1
Ensure other third parties who receive the information from the Recipient enter an agreement imposing substantially the same obligations as the Agreement, and if the Recipient fails to do this, the Recipient will be responsible for the their actions	2.2
Notify individuals likely to suffer serious harm, of any privacy breach of their information by the Recipient (unless the Details say the Discloser will be responsible for this)	3
Ensure individuals can seek access to or correction of their information to a similar extent to which individuals would be able to do so, if the Privacy Act applied to the Recipient	4
Treat the transferred information consistently with local data protection laws (but also the Agreement, so far as law allows)	5.2
Notify the Discloser (so far as law allows) if the information is required by a court or government agency, so that the Discloser can contest this	5.3
Ensure it has made reasonable efforts to identify, and is not aware of, any law which might substantially undermine the protections in the Agreement. Notify the Discloser if this changes in future	5.4
<b>Discloser’s key obligations</b>	
Make sure that when the information is sent to the Recipient, it has been collected, processed and sent in compliance with law	5.1
Notify individuals likely to suffer serious harm, of any privacy breach of their information by the Recipient, if the Details say the Discloser is responsible for this	3

Other important terms	
The Discloser can suspend disclosures of information if the recipient is in breach until remedied	1.8
Individuals can enforce the Agreement when there is a breach of key obligations that would cause them harm (an Interference with Privacy), and can seek remedies similar to those that would apply under the Privacy Act (e.g., monetary compensation or orders to change the party's conduct)	6.1 – 6.3
As well as any right to terminate on notice agreed in the Details, the Discloser can terminate if specified events occur which could limit the protective effect of the Agreement (e.g., a suspension of transfers for more than 30 days, the Recipient is subject to laws that materially reduce the protections intended by the Agreement, the Recipient's compliance with the Agreement would put it in breach of law, or the Recipient undergoes an insolvency event)	7.2
As well as any right to terminate on notice agreed in the Details, either party can terminate if the other party has persistently or materially breached the Agreement 30 days after notifying that this should be remedied where this has not happened	7.2, 7.3
After termination, the Agreement's terms will keep applying to the Recipient in relation to the information until the information has been securely deleted / destroyed	7.4
The Agreement is governed by New Zealand law and each party agrees disputes can be settled in New Zealand's courts.	8.1
The Agreement is confidential, but either party can disclose it as required by law, to the Privacy Commissioner (if they say it is to be kept confidential so far as law permits), or to individuals who request it (but the parties must consult and allow for removal of commercially sensitive information)	8.3

## Do I need to use the Model Agreement?





## Part 2: General Terms

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### 1 What safeguards must the Recipient have in place?

#### 1.1 Limits on collection

The Recipient must only collect transferred information as reasonably necessary for lawful purposes connected with its functions or activities. The Recipient must ensure that its methods of collection are lawful, fair and do not intrude unreasonably on the affairs of any Individual.

#### 1.2 Limits on use and disclosure

The Recipient will not use or disclose transferred information except as permitted in the Details.

#### 1.3 Security

The Recipient will protect the transferred information by implementing and maintaining best practice safeguards against any loss of the transferred information, and any unauthorised access, use, modification or disclosure of the transferred information. The Recipient will also meet any additional security requirements specified in the Details.

**Best practice** means at least the standard of practice generally expected globally in the same or similar circumstances, from a reasonable and prudent processor of personal information that is the same or of a similar nature to the transferred information.

#### 1.4 Accuracy

The Recipient will take reasonable steps to ensure that the transferred information is accurate, up to date, complete, relevant and not misleading ("**Accurate**") before using it.

#### 1.5 Deletion

The Recipient will promptly and securely destroy or delete the transferred information once it is no longer reasonably required by the Recipient for any use permitted in the Details. The Recipient will also do this as required by any "deletion event / date" specified in the Details. The Recipient will promptly notify the Discloser when it has deleted the transferred information.

#### 1.6 Additional precautions for Sensitive Information

The Recipient acknowledges and agrees that a failure to protect the "sensitive information" identified in the Details is particularly likely to cause harm to Individuals. The Recipient will have in place the additional precautions set out in the Details in relation to the sensitive information.

#### 1.7 Privacy officer

The Recipient will maintain a person with responsibility for monitoring and ensuring the Recipient's compliance with this agreement ("**Privacy Officer**"). The Recipient will ensure that the Privacy Officer provides reasonable co-operation to Individuals and the Discloser for the purposes of clauses 3 and 4. The Recipient will notify the Discloser of its Privacy Officer and will keep the Discloser updated with the details of any new Privacy Officer if this changes.

#### 1.8 Discloser may suspend transfers of information if Recipient is in breach

If the Recipient is in breach of this agreement, the Discloser may suspend any further disclosure of transferred information to the Recipient, until the Recipient has corrected the breach.

## 2 What if the Recipient shares information with others?

### 2.1 **Where third parties process personal information for the Recipient**

Without taking away from clause 1.2, if the Recipient discloses transferred information to a third party, then if the third party's use and disclosure of the information is solely as an agent for the Recipient and not for the third party's own purposes:

- the Recipient must use all reasonable endeavours to prevent unauthorised use or disclosure of the transferred information, including by ensuring that the third party is obliged not to use or disclose the transferred information except as authorised by the Recipient, and is obliged to have in place safeguards consistent with the requirements of clause 1.3;
- for the purposes of this agreement the transferred information held by the third party will be treated as being in the control of the Recipient, and the Recipient is responsible for the third party's acts and omissions in relation to the transferred information.

### 2.2 **Where third parties process personal information for their own purposes**

Without taking away from clause 1.2, if the Recipient discloses transferred information to a third party, then if the third party uses or discloses the information for its own purposes and not solely as agent of the Recipient:

- the Recipient must ensure that the third party enters into a binding and enforceable agreement with the Recipient, imposing on the third party substantially the same obligations in respect of that transferred information as are imposed on the Recipient under this agreement, and giving Individuals substantially the same rights to enforce those obligations as they have under this agreement; and
- if the Recipient fails to ensure that the third party enters into such an agreement, then under this agreement the transferred information held by the third party will be treated as being in the control of the Recipient, and the Recipient will be responsible for the third party's acts and omissions in relation to the transferred information.

This clause 2.2 does not apply to any disclosure required by law, or any disclosure to a third party that is subject to the Privacy Act or other laws that overall provide comparable safeguards.

### 3 What happens if there is a privacy breach?

#### 3.1 The responsible party must notify affected Individuals of a notifiable privacy breach

The responsible party identified in the Details must notify each affected Individual as soon as practicable after becoming aware that a notifiable privacy breach has occurred, but:

- if it is not reasonably practicable for that party to directly notify an affected Individual or each member of a group of affected Individuals, that party may give public notice of the privacy breach so long as that party ensures the public notice does not identify any affected Individual;
- that party may delay notification and/or public notice to the extent and for so long as it believes this is necessary because notification or public notice would increase the risk to the security of transferred information and the risk outweighs the benefits of informing affected Individuals;
- that party is not required to give any notification or public notice where that would not be required from the Recipient under the Privacy Act if the Recipient was subject to the Act.

**Notifiable privacy breach** means a privacy breach that it is reasonable to believe has caused serious harm to an affected Individual or Individuals or is likely to do so.

**Privacy breach** means any unauthorised or accidental access to, or disclosure, alteration, loss, or destruction of, transferred information, or any action that prevents the Recipient from accessing transferred information on either a temporary or permanent basis.

#### 3.2 The Discloser may notify affected individuals if the Recipient fails to do so

If the Recipient is responsible for notifying Individuals under clause 3.1 but fails to give notice when required under that clause, the Discloser may give notice on behalf of the Recipient.

#### 3.3 The Recipient may need to notify privacy breaches under local data laws

Nothing in this clause 3 reduces any obligation the Recipient may have to notify a privacy breach under the local data law specified in the Details, to the extent this is permitted by clause 5.2.

#### 3.4 The Recipient must notify the Discloser if the Recipient learns of a privacy breach

The Recipient will promptly notify the Discloser as soon as the Recipient becomes aware that a notifiable privacy breach has occurred, and if the Discloser is responsible for notifying Individuals of privacy breaches will provide all assistance and information reasonably required by the Discloser to meet its obligations under this clause 3.

## 4 What happens if an individual asks to see or correct their personal information?

### 4.1 Each Individual has rights of access and correction

The Recipient agrees that each Individual has a right to access, and to seek correction of, their personal information held by the Recipient that is included in the transferred information.

### 4.2 How to handle a request for access

If an Individual requests access to their transferred information, then subject to clauses 4.4 and 4.5, the Recipient will confirm whether or not it holds any transferred information about them and, if it does, will provide them with access to the information and advise them that they may request correction of their information.

### 4.3 How to handle a request for correction

Where an Individual requests correction of their transferred information, the Recipient will take reasonable steps to ensure that the information is Accurate (as defined in clause 1.4) taking into account the permitted uses specified in the Details. If the Recipient is not willing to correct the information as requested, the Recipient will take reasonable steps to ensure a statement of the requested correction is attached to the information, so as to ensure it will always be read with the information. Where the Recipient corrects any transferred information or attaches a statement of correction, the Recipient must take reasonable steps to inform any person to whom the Recipient has disclosed the relevant transferred information.

### 4.4 Timeframes for responding to requests for access or correction

The Recipient must respond to an Individual's request for access to or correction of their transferred information as soon as reasonably practicable and no later than 30 days after receiving the request. The Recipient must provide reasonable assistance to the Individual in relation to each request.

### 4.5 When can a request be refused?

In relation to any request from an Individual under this clause 4, the Recipient may refuse access, extend the timeframe for complying with the request, and/or charge the Individual for complying with the request, to the extent that this would be permitted if the request was made under the Privacy Act and the Recipient was subject to the Privacy Act.

## 5 What about complying with laws?

### 5.1 **The Discloser will comply with its own laws**

At the time of sending to the Recipient, the Discloser undertakes that the transferred information has been collected, processed and sent to the Recipient in compliance with all laws applying to the Discloser.

### 5.2 **The Recipient will comply with its own laws**

The Recipient will ensure that its treatment of the transferred information is consistent with the “local data law” specified in the Details. However, where a requirement of the local data law is less protective than the other requirements of this agreement, to the extent permitted by law the Recipient will comply with the requirement that is the most protective of the transferred information and the interests of the relevant Individuals.

### 5.3 **The Recipient must notify the Discloser about any use or disclosure compelled by law**

If the Recipient is required by a court or government agency under any law to disclose or use the transferred information in a way that would not otherwise be permitted by this agreement, then to the extent law allows the Recipient must notify the Discloser to give it the opportunity to contest that legal requirement (for example, by taking the matter to court).

### 5.4 **The Recipient is not aware of any local laws that would undermine this agreement**

The Recipient confirms that at the time of entering into this agreement it has made reasonable efforts to identify whether it is covered by any law that could reasonably be expected to have a substantial adverse effect on the protections intended by this agreement, and is not aware of any such law. The Recipient will use reasonable efforts to ensure that, if any such law applies to it in the future, it will promptly notify the Discloser.

## 6 What can Individuals do if there is a breach?

### 6.1 Individuals can claim compensation or other court orders

If the Recipient breaches any obligation(s) under clauses 1, 3 or 4, and the breach is an Interference with Privacy of an Individual, the Individual will be entitled to one or more of the following remedies, with the choice and extent of remedy determined by the tribunal hearing the matter, as it considers just and equitable:

- monetary compensation from the Recipient for loss suffered as a result of the Interference with Privacy, which may include monetary compensation for humiliation, loss of dignity, and/or injury to the feelings of the Individual, or for any adverse effect on the Individual's rights, benefits, privileges or obligations;
- an order restraining the Recipient from continuing or repeating the Interference with Privacy, or from engaging in, or causing or permitting others to engage in, conduct of the same kind, or conduct of any similar kind specified in the order;
- an order that the Recipient perform any acts specified in the order with a view to remedying the Interference with Privacy, or redressing any loss or damage suffered by the aggrieved individual or aggrieved individuals as a result of the interference, or both.

However, the Individual will not be entitled to any damages or other relief beyond the damages or other relief that could reasonably be expected to be granted under the Privacy Act in the same circumstances, if the Recipient was subject to the Privacy Act.

***Interference with Privacy*** in relation to an Individual, means:

- any breach by the Recipient of clause 1 that has or may have a detrimental impact on the Individual, including any loss, damage or injury to them, or any adverse effect on their rights, benefits, obligations or privileges, or significant humiliation, significant loss of dignity, or significant injury to their feelings;
- any breach by the Recipient of clause 3.1 in relation to a privacy breach involving that Individual's transferred information; and/or
- any breach by the Recipient of clause 4 in relation to a request by that Individual for access to or correction of their transferred information.

### 6.2 Individuals have these rights even though they are not party to this agreement

The entitlement to a remedy under clause 6.1 is directly enforceable by each Individual in accordance with Part 2 of the Contract and Commercial Law Act 2017 (NZ). The Discloser and Recipient may amend the terms of this agreement without the consent of any Individual, so long as the amendment either increases the protections provided by this agreement, or ensures that if the protections are reduced they remain at such a level that any transferred information disclosed to the Recipient by the Discloser before the amendment could still be disclosed to the Recipient after the amendment in compliance with the Privacy Act.

### 6.3 The Discloser can claim on behalf of Individuals if requested

The Discloser may bring a claim or claims under clause 6.1 on behalf of one or more Individuals, at the request of those Individuals, although the Discloser is not obliged to do so.

## 7 When does this agreement start and end?

### 7.1 When does this agreement start?

Once signed by both parties, this agreement begins on the Start Date and continues until the End Date. If the Start Date is earlier than the date of signing, this agreement will apply as if it had been signed on the Start Date.

### 7.2 When can the Discloser end this agreement?

In addition to any termination rights set out in the Details, the Discloser can terminate this agreement by giving notice to the Recipient if:

- a suspension under clause 1.8 has continued for more than 30 days;
- the Recipient has persistently or materially breached this agreement, the Discloser has notified the Recipient requiring the matter to be addressed, and at the end of 30 days following that notice the Recipient has failed to demonstrate to the Discloser's reasonable satisfaction that all necessary changes have been made to prevent a recurrence;
- the Discloser reasonably considers that the Recipient is subject to one or more laws that have a material adverse effect on the protections intended by this agreement; or
- compliance by the Recipient with its obligations under this agreement would put it in breach of one or more laws that apply to the Recipient; or
- the Recipient undergoes an Insolvency Event.

***Insolvency Event*** means that the Recipient: ceases, or threatens to cease, all or substantially all of its business; is insolvent or bankrupt, or has a receiver, liquidator, administrator, bankruptcy trustee, statutory manager or similar officer appointed; and/or makes an assignment for the benefit of its creditors, or makes any arrangement or composition with its creditors.

### 7.3 When can the Recipient end this agreement?

In addition to any termination rights set out in the Details, the Recipient may terminate this agreement by giving notice to the Discloser, if the Discloser has persistently or materially breached this agreement, the Recipient has notified the Discloser requiring the matter to be addressed, and at the end of 30 days following that notice the Discloser has failed to demonstrate to the Recipient's reasonable satisfaction that all necessary changes have been made to prevent a recurrence.

### 7.4 What happens when this agreement ends?

Despite any termination or expiry, all terms of this agreement will continue to apply to the transferred information that the Discloser sent to the Recipient during the period from the Start Date up to and including the End Date. The terms will stop applying once the Recipient has securely and permanently deleted or destroyed all of the transferred information.

## 8 Anything else I should be aware of?

- 8.1 This agreement is governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 8.2 This agreement takes priority over all other agreements between the Discloser and Recipient, except as specifically stated otherwise in any Special Terms set out in the Details.
- 8.3 Each party will keep this agreement confidential, provided that:
- this will not prevent any disclosure required by law;
  - either party may voluntarily disclose this agreement to the Privacy Commissioner, but only if they first inform the Privacy Commissioner that the disclosure is made on the basis that the Agreement is to be kept confidential as far as permitted by law;
  - each party will disclose this agreement to an Individual who requests it, provided that the party has first consulted with the other party and redacted any information that the other party reasonably identifies as commercially sensitive and not necessary for the Individual to receive in order to enforce their rights under this agreement. If requested, the party will provide the Individual with reasons for the redactions, to the extent possible without revealing any of the redacted information.
- 8.4 Each party undertakes that it has full power, capacity and authority to execute, deliver and perform its obligations under this agreement.
- 8.5 Each party undertakes that it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this agreement.
- 8.6 Each party undertakes that its obligations as set out in this agreement are legal, valid, binding, and enforceable in accordance with their terms.
- 8.7 Neither party may assign, transfer or otherwise dispose of any of its rights or obligations under this agreement except with the prior written consent of the other party.
- 8.8 No amendment to this agreement will be effective unless in writing and signed by the Discloser and the Recipient.
- 8.9 If a party fails to exercise, or delays or holds off exercising, a power or right under this agreement, that is not a waiver of the power or right. A single or partial exercise of such a power or right does not preclude further exercises of that power or right or any other.
- 8.10 A determination that any provision of this agreement is illegal, void or unenforceable will not affect any other part of this agreement.
- 8.11 This agreement may be executed in any number of counterparts. Once each party has received a counterpart signed by the other (or a digital copy of that signed counterpart), those counterparts will together be treated as if they were a single signed copy of the Agreement.
- 8.12 In this agreement, unless the context requires otherwise:
- a requirement to notify or give notice is to give notice in writing, which may include email;
  - a clause reference in the General Terms is to a clause of the General Terms, and not to a clause in the Details;
  - a reference to a party to this agreement includes that party's personal representatives, successors and permitted assigns;
  - a reference to any law is a reference to that law as amended, or to any law substituted for that law;
  - as far as possible, the provisions of this agreement will be interpreted so as to promote consistency with the Privacy Act.