

Confidentiality Agreement

PARTIES

Kāinga Ora–Homes and Communities ("Kāinga Ora"); and

Please advise correct entity and a version for execution will be provided ("Receiving Party")

(each a Party to this agreement).

THIS AGREEMENT RECORDS THAT:

1 INTERPRETATION

1.1 Definitions

In this agreement:

Confidential Information means all and any material and information of every kind provided to the Receiving Party at any time by Kāinga Ora (or by any person on its behalf) or which comes to the attention of the Receiving Party (including information about the business and operations of Kāinga Ora and its subsidiaries, its systems, infrastructure and/or employees), whether oral, in writing or in any other form whether or not such information is described as confidential, and includes, without limitation, the information set out in the Schedule, but excludes information which, without breach of this agreement or other breach of confidence:

- (a) is or becomes public knowledge;
- (b) the Receiving Party already knew or had, on a non-confidential basis, before receiving the information under or in connection with this agreement;
- (c) is acquired or obtained by the Receiving Party from a third party having no obligation of confidentiality to Kāinga Ora; or
- (d) is independently developed by the Receiving Party without reliance on or use of information received under or in connection with this agreement.

Permitted Purpose has the meaning set out in the Schedule.

2 RECEIVING PARTY'S OBLIGATIONS

2.1 Duty of confidentiality

The Receiving Party agrees:

- (a) that the Confidential Information is the property of and is confidential to Kāinga Ora and that nothing in this agreement grants the Receiving Party any rights in the information;
- (b) to keep confidential all Confidential Information;
- (c) to use the Confidential Information only in connection with the Permitted Purpose; and
- (d) to protect and safeguard the Confidential Information against any unauthorised publication or disclosure and to comply with any specific security measures in connection with the Confidential Information requested by Kāinga Ora.

2.2 Non disclosure

- (a) The Receiving Party agrees not to disclose the Confidential Information to any third party, other than:
 - (i) to the Receiving Party's directors, officers, employees, agents, contractors and advisers who have a need to know (each a *Recipient*) in connection with the Permitted Purpose;
 - (ii) to the extent disclosure is required by law or by the order of any court (provided that the Receiving Party gives reasonable prior notice to Kāinga Ora of such requirement, consults with Kāinga Ora, and discloses no more Confidential Information that is strictly required); and
 - (iii) where Kāinga Ora has given its prior written consent to the disclosure.

- (b) Whenever Confidential Information is disclosed pursuant to clause 2.2(a)(i), the Receiving Party must inform the Recipient that:
 - (i) the information being disclosed is confidential;
 - (ii) the information must not be disclosed to any other person;
 - (iii) the Recipient is subject to an obligation of confidentiality which is legally enforceable against it and/or the Receiving Party; and
 - (iv) the Receiving Party remains responsible for any use or disclosure of the Confidential Information by such Recipient.

2.3 **Uncertainty**

If there is any uncertainty as to whether any information is Confidential Information, that information must be treated as Confidential Information unless Kāinga Ora notifies the Receiving Party in writing to the contrary.

2.4 **Security of Confidential Information**

- (a) The Receiving Party must:
 - (i) maintain effective security measures to protect all Confidential Information from unauthorised access, use, copying or disclosure;
 - (ii) notify Kāinga Ora immediately in writing if the Receiving Party becomes aware of any possible or actual breach of this agreement and take all reasonable steps required to prevent or stop that breach, at the Receiving Party's expense; and
 - (iii) reasonably assist Kāinga Ora in connection with any action or investigation regarding any possible or actual unauthorised disclosure or misuse of the Confidential Information.
- (b) If there has been a security breach, Kāinga Ora may suspend the exchange of information under this agreement by notice in writing to give the Receiving Party time to remedy the breach.

2.5 **No unauthorised copies**

The Receiving Party must not copy or extract any Confidential Information without the prior written consent of Kāinga Ora.

3 **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

3.1 Whenever Kāinga Ora requests, the Receiving Party must immediately return or destroy all materials containing any of the Confidential Information in the Receiving Party's or any Recipient's possession or control.

3.2 Notwithstanding clause 3.1, the Receiving Party may retain any portion of the Confidential Information:

- (a) necessary for inclusion in documents prepared by the Receiving Party for Kāinga Ora and contained in electronic back-ups or archives and which cannot reasonably be returned or destroyed;
- (b) included in board papers, or minutes of the board or a board committee, provided those papers and minutes contain only a level of detail consistent with normal business practice and the usual practices of the relevant board or committee;
- (c) included in documents created or retained by advisers of the Receiving Party where those documents are required to be held by law or for the purposes of compliance with professional standards or insurance policies applicable to the adviser; or
- (d) that the Receiving Party is required by law to retain,

provided that such portion of Confidential Information is retained by the Receiving Party in accordance with the terms and conditions of this agreement.

4 **LIABILITY**

4.1 **Liability of Kāinga Ora**

The Receiving Party acknowledges that Kāinga Ora:

- (a) does not represent or warrant that the Confidential Information is accurate, current or complete; and
- (b) is not liable to the Receiving Party or any other person in relation to the use of the Confidential Information by the Receiving Party or any other person.

4.2 **Receiving Party's indemnity**

The Receiving Party indemnifies and will keep indemnified Kāinga Ora against all losses, damages, liabilities, costs (including legal costs), expenses, claims, remedies, matters or actions, arising from any:

- (a) breach of any obligation by the Receiving Party under this agreement; or
- (b) other use of the Confidential Information by the Receiving Party.

4.3 **Injunctive relief**

The Receiving Party acknowledges that, because of the nature of the Confidential Information, if there is any unauthorised use or disclosure of the Confidential Information, Kāinga Ora is expressly entitled to seek and obtain an ex parte interim, interlocutory or final injunction to restrain any unauthorised use or disclosure of the Confidential Information.

5 **GENERAL**

5.1 **Severance**

If a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.

5.2 **Waiver and exercise of rights**

A single or partial exercise or waiver of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.

5.3 **Governing law and jurisdiction**

This agreement is governed by and is to be construed in accordance with New Zealand law and the Courts of New Zealand shall have non-exclusive jurisdiction in any proceedings relating to it.

5.4 **Counterparts**

This agreement may be signed in any number of counterparts, each of which is an original and all of which, taken together, form one single document.

EXECUTION

Signed for and on behalf of Please advise correct entity and a version for execution will be provided by

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Authorised Signatory(ies)

.....

Date

Signed for and on behalf of Kāinga Ora– Homes and Communities by

.....

Authorised Signatory(ies)

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Date

Schedule – Confidential Information and Permitted Purpose

Description of Confidential Information of Kāinga Ora–Homes and Communities:

1. Proposal details and site specific due diligence materials relating the the Nelson City Centre Project

Permitted Purpose means each and any of the following:

1. To enable the Parties to assess the opportunity independently and/or work together in relation to the proposed Nelson City Centre Project
2. To enable pre-contractual discussions between the Parties about the proposed Nelson City Centre Project
3. To inform any subsequent commercial proposals relating to the proposed Nelson City Centre Project