

**Privacy Commissioner's Privacy Trust Mark
Accreditation Programme
Terms and Conditions**

Parties

The party specified in Schedule 1 (**Participant**)

The Privacy Commissioner

Background

- A The Privacy Commissioner has established a Privacy Trust Mark accreditation programme that recognises and certifies excellence in privacy standards. Participants in the Programme acknowledge the steps they will take and commitments they have made to meet exceptional privacy standards in providing an accredited product, service or process.
- B The Participant has agreed to participate in the Programme and has applied to the Privacy Commissioner to use the Programme Brandmark.
- C The Privacy Commissioner has granted Accreditation to the Participant in accordance with this Agreement.

Operative provisions

1 Term

- 1.1 This agreement takes effect on the Commencement Date and remains in force for two years unless suspended or terminated in accordance with clause 5.
- 1.2 The agreement may be renewed if the Participant applies for renewal no later than [60] days before the expiry of the term, unless the Participant has not used the Programme Brand or has ceased using the Programme Brand. Renewal of the agreement will be determined by the Privacy Commissioner in his or her sole discretion.

2 Accreditation

- 2.1 The Participant agrees to participate in the Programme in accordance with this agreement.
- 2.2 As part of the Participant's application for Accreditation and as required by the Privacy Commissioner following submission of the application, the Participant will provide the Privacy Commissioner with evidence in support of its submission that it provides a product, service or process for which accreditation is sought in accordance with the Programme.

- 2.3 Accreditation or subsequent suspension or termination of Accreditation will be determined by the Privacy Commissioner in his or her sole discretion.
- 2.4 The Participant acknowledges that Accreditation does not mean that its obligations under the Privacy Act 1993, and other relevant legislation are met. The Participant is still responsible for ensuring that it meets its obligations under all relevant legislation.
- 2.5 The Participant must notify the Privacy Commissioner immediately upon the Participant becoming aware of a breach or the investigation of a breach of privacy law, consumer law, codes of practice (e.g. the Fair Trading Act 1986, the Consumer Guarantees Act 1993, Advertising Standards Authority Codes of Practice) by the Participant. Failure to notify the Privacy Commissioner immediately will constitute grounds for immediate suspension or termination of this agreement under clause 7.2.

3 Participant's obligations

- 3.1 The Participant will:
 - 3.1.1 Provide the accredited product, service or process in accordance with the privacy standards it has notified to the Privacy Commissioner in its application for Accreditation or as subsequently notified to and acknowledged by the Privacy Commissioner.
 - 3.1.2 Accept as final and binding any decision made by the Privacy Commissioner in relation to Accreditation, suspension or termination of Accreditation.
 - 3.1.3 Comply with any audit requirements in accordance with clause 4.
 - 3.1.4 Display any materials relating to the Programme Brandmark in accordance with clause 7.
 - 3.1.5 Grant the Privacy Commissioner with reasonable access to its records and other information that is relevant to undertaking assessments in respect of the Programme.
- 3.2 If at any time the Participant:
 - 3.2.1 Ceases to provide the accredited product, service or process in accordance with the Programme; or
 - 3.2.2 Changes its business operations in any manner which may affect its Accreditation, including redesign of the Participant's website, amendments to its privacy or business policies, rebrand of its business or amendments to its material contracts,

it must within five business days give written notice of this to the Privacy Commissioner and the Privacy Commissioner will re-assess the Participant's Accreditation as appropriate

4 Audits

- 4.1 The Privacy Commissioner may from time to time conduct, or engage a third party to conduct on its behalf, audits to assess compliance by the Participant with the Programme, Programme, Code of Conduct and/or the Rules.
- 4.2 Such audits will be tailored to achieve the purpose of assessing compliance and may include mystery shops, record and document audits, complaints, training and communication centre assessments. Audits will be conducted during business hours and in such a manner so as not to disrupt unreasonably the business operations of the Participant.
- 4.3 The Participant will do all things necessary at its own cost to assist with the audits including promptly responding to reasonable requests for information and providing access to the Participant's business premises and relevant records.
- 4.4 The Participant will promptly and fully inform the Privacy Commissioner of any:
 - 4.4.1 product warning or public statement by the Participant in relation to an accredited product, service or process; and
 - 4.4.2 warning, adverse finding, prosecution, litigation or other regulatory action by any body that adversely affects the Participant.
- 4.5 The Participant will promptly and fully inform the Privacy Commissioner of any data or privacy breach arising directly or indirectly from an accredited product, service or process and will follow the Privacy Commissioner's data breach notification guidelines.

5 Suspension and termination

- 5.1 Either party may at any time terminate this agreement and the Participant's Accreditation by giving the other party 30 days written notice.
- 5.2 The Privacy Commissioner may at any time suspend or terminate this agreement and the Participant's Accreditation immediately on written notice if:
 - 5.2.1 The Participant is in breach of this agreement, the Programme, and/or the Brand Rules.
 - 5.2.2 The Privacy Commissioner receives a complaint relating to the Participant from a third party and in its sole discretion determines that suspension or termination is the appropriate action.

- 5.2.3 The Participant in the Privacy Commissioner's sole discretion brings the Privacy Commissioner and/or the Programme into disrepute.
- 5.2.4 The Participant is the subject of an Insolvency Event.
- 5.3 Immediately on termination of this agreement and/or Accreditation, the Participant must:
 - 5.3.1 Cease to promote or represent in any manner that it is Accredited and cease to assert its participation in the Programme.
 - 5.3.2 Cease using the Programme Brandmark and return, or if instructed by the Privacy Commissioner destroy, any documents or other materials with the Programme Brandmark.

6 Participant's intellectual property

- 6.1 Subject to clause 6.2 , upon the Participant obtaining Accreditation and for the duration of its participation in the Programme, the Participant will grant to the Privacy Commissioner a perpetual, revocable, royalty free, non-exclusive licence to use the Participant's name, trade mark, design and other relevant intellectual property in information materials and communications associated with the Programme, on the Privacy Commissioner's website, smart phone applications, social media tools, media releases and promotional materials relating to the Programme, and otherwise to the extent contemplated by this agreement.
- 6.2 In the event that a Participant's participation in the Programme is suspended or terminated, the Privacy Commissioner reserves the right to publish on its website, smart phone applications, social media tools and otherwise the reasons for such suspension or termination.

7 Programme Brandmark

- 7.1 Upon the Participant obtaining Accreditation and for the duration of its participation in the Programme, the Privacy Commissioner will grant to the Participant a perpetual, revocable, royalty free, non-exclusive licence to use the Programme Brandmark in accordance with this agreement.
- 7.2 The Participant agrees and acknowledges that all Intellectual Property Rights in the Programme and the Programme Brandmark are owned solely by the Privacy Commissioner.
- 7.3 The Participant:
 - 7.3.1 May use the Programme Brandmark to promote the accredited product, service or process on its documents, website, smart phone applications,

social media tools, promotional material and otherwise to the extent contemplated by this agreement.

- 7.3.2 Must use the Programme Brandmark only in accordance with the Privacy Commissioner's Brand Rules and Brand Usage Guidelines or other instructions.
- 7.3.3 Must not make alterations or modifications to the Programme Brandmark without the prior written consent of the Privacy Commissioner.
- 7.4 Except as authorised by the licence or at law, the Participant must not (and must not allow any other person for whom it is responsible to) use, copy, modify or reproduce the Programme Brandmark in whole or in part.
- 7.5 In the event that the Participant's Accreditation terminates or this agreement terminates for any reason:
 - 7.5.1 The Participant's right to use the Programme Brandmark under licence will terminate immediately.
 - 7.5.2 The Participant must immediately discontinue its use of the Programme Brandmark and remove it from all documents, websites, smart phone applications, social media tools and other promotional material.

8 Promotional Material

- 8.1 The Participant must submit to the Privacy Commissioner for the Privacy Commissioner's prior written approval any of the following information or materials:
 - 8.1.1 Samples of all marketing, advertising and promotional materials (including any point of sale material) which are intended to bear the Programme Brandmark or make reference to its Accreditation under the Programme; and
 - 8.1.2 All results or excerpts from anything published by the Privacy Commissioner about the Participant and/or its products or services that the Participant wishes to use in its marketing, advertising or promotional materials (including any point of sale material) of its products or services.
- 8.2 Upon receiving any information or materials set out in clauses 8.1.1 or 8.1.2, the Privacy Commissioner will reply to the Participant as soon as is reasonably practicable and in any event not more than 10 working days after receiving the information or materials from the Participant.
- 8.3 The Privacy Commissioner may give or withhold its approval of the information or materials at its sole discretion and may rescind its approval at any time, acting reasonably.

- 8.4 The Participant must not use the Programme Brandmark in connection with the marketing, advertising or promotion of the Participant's products or services without first seeking the Privacy Commissioner's prior written approval in accordance with this clause 8.
- 8.5 The Participant must promptly submit to the Privacy Commissioner on demand samples of all marketing, advertising and promotional materials relating to its products and services which bear the Programme Brandmark, including its use on any point of sale material and all instances of on-line usage.

9 Limitation of the Privacy Commissioner's liability

- 9.1 The Privacy Commissioner is not liable to the Participant (whether in contract, tort (including negligence) or otherwise) for any loss (whether direct or indirect), damage, claim, proceedings or costs suffered or incurred by the Participant arising directly or indirectly from any act or omission by the Privacy Commissioner (or any of its related parties).
- 9.2 The Participant indemnifies the Privacy Commissioner against any loss, damage and expenses arising from the Participant's use of the Programme Brandmark.

10 Privacy Act 1993

- 10.1 If the Privacy Commissioner collects and holds any personal information relating to the Participant under this agreement, such information will be held and used in accordance with the Privacy Act 1993 and the Privacy Commissioner's privacy policy on its website. The Participant may access and correct any personal information in accordance with the Privacy Act.
- 10.2 The Programme and this agreement does not limit the exercise of the Privacy Commissioner's statutory functions in relation to any matter coming to his or her attention in connection with the Programme or this agreement.
- 10.3 The Privacy Commissioner may investigate complaints about the Participant under the Privacy Act 1993, including complaints about an accredited product, service or process, and may exercise his or her powers under the Privacy Act to obtain information from the Participant.

11 Dispute resolution

- 11.1 If a dispute arises under this agreement or concerning its subject matter, either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. The parties will procure that the parties' nominated senior representatives must meet within five business days of the notice and endeavour to resolve the dispute in good faith. If such meeting does not take place

within five business days of the notice or if after five business days of the meeting the dispute remains unresolved, either party may pursue its rights at law.

- 11.2 During a dispute, each party must continue to perform its obligations under this agreement.
- 11.3 Clauses 11.1 and 11.2 do not restrict or limit the right of either party from taking immediate steps to obtain equitable relief before an appropriate court, or to immediately terminate this agreement where this document provides such a right.

12 Notices

- 12.1 Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:
 - 12.1.1 Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below (in case of the Privacy Commissioner) or in Schedule 1 (in case of the Participant).
 - 12.1.2 Emailed to that party at the email address below and marked for the attention of the relevant department or officer (if any) set out below (in case of the Privacy Commissioner) or in Schedule 1 (in case of the Participant).

The Privacy Commissioner

Name: The Privacy Commissioner
Address: Level 8, 109 Featherston St Wellington 6011, New Zealand
Email: Privacy.tick@privacy.org.nz

- 12.2 If a party gives the other party three business days' notice of a change of its address or email, any notice or communication is only given by that other party if it is delivered, posted or emailed to the latest address. Any notice or communication is to be treated as given at the following time:
 - 12.2.1 If it is delivered, when it is left at the relevant address or received by the relevant email address.
 - 12.2.2 If it is sent by post, five (or, in the case of a notice or communication posted to another country, ten) business days after it is posted.
- 12.3 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

13 Miscellaneous

Approvals and consents

- 13.1 Unless this agreement expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- 13.2 Where this agreement refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

Assignments and transfers

- 13.3 The Participant must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of the Privacy Commissioner.
- 13.4 A Change in Control of the Participant will be deemed an assignment for the purposes of this clause.

Contracts (Privity) Act 1982

- 13.5 Unless this agreement expressly provides otherwise, this agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.

Costs

- 13.6 Except as otherwise set out in this agreement, each party must pay its own costs and expenses for preparing, negotiating, executing and completing this agreement and any document related to this agreement.

Entire agreement

- 13.7 This agreement contains everything the parties have agreed in relation to its subject matter. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this agreement was executed.

Governing law and jurisdiction

- 13.8 This agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

Joint and individual liability and benefits

- 13.9 Except as otherwise set out in this agreement, any covenant, agreement, representation or warranty under this agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

Severability

- 13.10 Each provision of this agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this agreement in the relevant jurisdiction, but the rest of this agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Variation

- 13.11 The Participant acknowledges that the Privacy Commissioner may vary the terms of this agreement as well as the Programme Code of Conduct, Programme Rules or any other terms and conditions relating to the Participant's Accreditation under the Programme by providing the Participant with 10 working days' prior written notice of the variation coming into effect.

Waivers

- 13.12 A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.
- 13.13 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.

14 Definitions and interpretation

Definitions

- 14.1 In this agreement the following definitions apply:

Accreditation means accreditation of the Participant's product, service or process under the Programme recognised by written confirmation from The Privacy Commissioner.

Brand Rules means the Privacy Commissioner's standards for use of the Programme Brandmark by Participants and to which each Participant must adhere to, as amended and notified from time to time by the Privacy Commissioner, and as set out in Schedule 3.

Brand Usage Guidelines means the style guide for use of the Programme Brandmark that the Participant must observe, as amended and notified from time to time by the Privacy Commissioner, and as set out in Schedule 4.

Change in Control means in relation to the Participant, a change in any of the following:

- (a) Control of the composition of its board of directors.

- (b) Control of more than one half of the voting rights attaching to shares in the Participant.
- (c) Control of more than one half of the issued share capital of the Participant, excluding any part of the issued share capital which carries no right to participate beyond a specified amount in the distribution of either profit or capital.

Commencement Date means the date Accreditation is granted.

Insolvency Event means anything that reasonably indicates that there is a significant risk that the Participant is or will become unable to pay its debts as they fall due. This includes any of the following:

- (d) A meeting of the Participant's creditors being called or held.
- (e) A step being taken to make the Participant bankrupt.
- (f) A step being taken to wind up the Participant.
- (g) A step being taken to have a receiver, receiver and manager, administrator, liquidator or interim liquidator appointed to the Participant or any of its assets or such an appointment taking place.
- (h) The Participant entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors including any formal arrangement or compromise under the Companies Act 1993.
- (i) The Participant ceases or threatens to cease to carry on its main business.
- (j) The Participant is declared at risk or a recommendation is made by the Securities Commission to appoint a statutory manager of the person under the Corporations (Investigation and Management) Act 1989.

Intellectual Property means in relation to all and any patents, patent applications, trade marks, service marks, trade names, registered designs, unregistered design rights, copyrights, know how, trade secrets, domain names, internet addresses, rights in confidential information, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same now or in the future, entered into or enjoyed by the Privacy Commissioner.

Programme means the Privacy Commissioner's Privacy Trust Mark accreditation programme to recognise and promote excellence in privacy standards for products, services and processes.

Programme Brandmark means the Privacy Commissioner's Privacy Trust Mark logo set out in Schedule 2.

Related Person in respect of a company means a related company of that company in terms of section 2(3) of the Companies Act 1993.

Interpretation

- 14.2 In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:
- 14.2.1 Headings are inserted for convenience only and do not affect the interpretation of this agreement.
 - 14.2.2 A reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Wellington, New Zealand.
 - 14.2.3 If the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 14.2.4 A reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 14.2.5 A reference in this agreement to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
 - 14.2.6 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this agreement.
 - 14.2.7 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 14.2.8 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 14.2.9 A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
 - 14.2.10 A reference to the word 'include' or 'including' is to be interpreted without limitation.
 - 14.2.11 Any schedules and attachments form part of this agreement.

Execution and date

Executed as an agreement.

Date: **XXXXXX**

The Privacy Commissioner by:

Signature

John Edwards

Privacy Commissioner

XXXXXXXXXXXXXXXX by:

.....
Signature of authorised person

.....
Name of authorised person (print)

.....
Office held

Schedule 1

Participant

Name:	
Trading name (if applicable):	
Registered address:	
Postal address:	
Name and contact details of person acting on behalf of Participant:	
Accredited product, service or process:	

Schedule 2

Programme Brandmark

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Schedule 3

Brand Rules

1. The Participant may not use any Intellectual Property, other than the Programme Brandmark.
2. The Programme Brandmark may only be used in direct association with the accredited product, service or process.
3. The Programme Brandmark may be reduced in size or enlarged (so long as, in either case it is legible) but cannot be edited in any way and may only be printed using the stipulated colours, or reproduced in black and white.
4. The Programme Brandmark must not be modified, altered in appearance or content, and no derivative work may be created based on the Programme Brandmark.
5. In displaying the Programme Brandmark in any medium, the Participant must include a link to the Privacy Commissioner's website [include web destination] to provide public access to information about the Programme Brandmark.
6. The Participant must not use the Programme Brandmark in any way that violates or infringes the rights of others, is unlawful, offensive, defamatory, obscene, misleading or deceptive, or is otherwise detrimental to the Privacy Commissioner's reputation.
7. The Participant will immediately notify the Privacy Commissioner of any suspected infringement of the Programme Brandmark by the Participant or any third party.
8. The Participant will promptly notify the Privacy Commissioner if it ceases to use the Programme Brandmark during the term of this agreement, or any renewal.

Schedule 4

Style Guide/Brand usage guidelines