

AGREEMENT FOR USE OF CRASH ANALYSIS SYSTEM

Between: NEW ZEALAND TRANSPORT AGENCY

And: xxxxx

Agreement executed on: xxxx

Agreement to expire on: xxxx

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1. PARTIES

1.1 The **parties** to this **agreement** are:

NZ TRANSPORT AGENCY

Victoria Arcade
50 Victoria Street
Private Bag 6995
Wellington 6141
New Zealand

Contact person: XXXX
Contact telephone number: XXXX

And

XXXXX

XXXX

XXXX

Contact person: xxxxx

Contact telephone number: xxxx

2. BACKGROUND

2.1 The **NZTA** maintains the Crash Analysis System (**CAS**), a system which holds **information** about, and allows analysis of, motor vehicle crashes in New Zealand. The **customer** wishes to obtain a licence for **users** to **use CAS** and the **NZTA**, by this **agreement**, grants the **customer** a licence for **users** to **use CAS** upon the terms and conditions contained in this **agreement**.

3. INTERPRETATION

3.1 In this **agreement**, parts of speech and grammatical forms of words defined have corresponding meanings and, unless the context otherwise requires:

agency has the same meaning as in section 2 of the Privacy Act 1993;

agreement means this agreement including the schedules;

CAS means the Crash Analysis System maintained by the **NZTA**;

customer means the legal entity specified in clause 1 of this **agreement** that is not the **NZTA**

information means all information held in **CAS**;

NZTA means the New Zealand Transport Agency established as a Crown entity by section 93 of the Land Transport Management Act 2003;

parties means the parties to this **agreement** as specified in clause 1 of this **agreement**;

personal information has the same meaning as in section 2 of the Privacy Act 1993;

use includes in relation to **CAS** any access to **information** by the **user** and any disclosure of **information** by the **NZTA**; and

user means a natural person named in Schedule 1.

THE PARTIES AGREE TO THE FOLLOWING:

4. GRANT OF A LICENCE

- 4.1 For the avoidance of doubt, neither the **customer** nor a **user** may **use** any **information** from **CAS** and the **NZTA** will not disclose any **information** from **CAS** in accordance with this **agreement** unless and until this **agreement** has been executed. From the date of execution of this **agreement** any **information** from **CAS** already held by a **customer** or **user** may be held and **used** only in accordance with this **agreement**.
- 4.2 Upon the **parties** executing this **agreement**, the **NZTA** grants to the **customer** a non-exclusive, non-assignable, revocable licence for **users** to **use CAS** strictly in accordance with the terms and conditions of this **agreement**.
- 4.3 The **parties** agree that there will be persons employed by or contracted to the **customer** who, in acting on behalf of the **customer**, will **use CAS**. Any such **use** of **CAS** shall be subject to the following:
- (a) No person other than a person named in Schedule 1, as updated in accordance with clauses 4.4 and 4.5, may **use CAS**
 - (b) Notwithstanding paragraph (a) no person other than a person:
 - (i) employed or contracted to a **customer** with the appropriate level of **use** specified in Schedule 3; and
 - (ii) named in Schedule 1; and
 - (iii) who has provided to the **NZTA** a signed Confidentiality Undertaking in the form specified in Schedule 4; and
 - (iv) who has received **NZTA** approval in writing
- may access or **use** any **personal information** from **CAS**.

- 4.4 The **customer** must ensure that Schedule 1 is maintained and updated so that it lists only those persons who are, at any relevant time, employed or contracted to the **customer** in roles that include **use of CAS**.
- 4.5 The **customer** must notify the **NZTA** in writing of any change to Schedule 1 throughout the term of this **agreement**. Notification must be made promptly and prior to any **use of CAS** by any person newly named in Schedule 1.
- 4.6 Connection to **CAS** will be via the internet using the **NZTA** Citrix Secure Gateway or by a direct connected secure link at the **customer's** cost.

5. TERM, VARIATION, SUSPENSION AND TERMINATION

- 5.1 This **agreement** is for an initial term of up to one year from the date of execution of the **agreement** and can be renewed from time to time upon further agreement of the **parties** in writing.
- 5.2 This **NZTA** may vary this **agreement**, including variation of the charges or fees, or terminate this **agreement**, upon 30 days notice to the **customer**.
- 5.3 The **customer** may terminate this agreement upon 30 days notice to the **NZTA**.
- 5.4 Notwithstanding anything to the contrary in this **agreement**, the **NZTA** may suspend, either wholly or in part, the **customer's use** or a **user's use of CAS**, without notice and with immediate effect, if the **NZTA** considers on reasonable grounds that the **customer** or **user** has breached any part of this **agreement** or the **customer** or **user** does something or fails to do something that may result in damage to the **NZTA's** reputation or business or the reputation or business of the Crown. Any such suspension of **use** will remain in force until the **NZTA**, in its sole discretion, determines to reinstate the **use** or to terminate the **agreement**.

6. FEES AND CHARGES

- 6.1 There is no charge for the **customer** to **use CAS**.
- 6.2 The **customer** is responsible for all internet access charges payable to its Internet Service Provider.

7. NZ LAW INCLUDING THE PRIVACY ACT 1993 AND OFFICIAL INFORMATION ACT 1982 and the LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

- 7.1 This **agreement** is governed by New Zealand law. The **parties** submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this **agreement**.

In particular:

- (a) any collection, storage, access, **use**, and disclosure of **personal information** must be in accordance with the provisions of the Privacy Act 1993 including the Information Privacy Principles in sections 1, 5, 9, 10 and 11 of that Act; and
- (b) for the purposes of section 9(2)(ba) of the Official Information Act 1982 or section 7 (2)(c) of the Local Government Official Information and Meetings Act 1987 the **parties** consider that the **personal information** obtained from **CAS** by a **customer** or **user** is subject to an obligation of confidence, and that making the **personal information** available any further than to the extent expressly provided in this **agreement** would be likely to prejudice the supply of similar **personal information**, and it is in the public interest that such **personal information** should continue to be supplied.

7.2 By entering into this **agreement** the **customer** acknowledges that it is aware of the relevant provisions of the Privacy Act 1993 and the Official Information Act 1982 or Local Government Official Information and Meetings Act 1987 and the implications thereof.

7.3 The **customer** undertakes that it will ensure that the **users** named from time to time in Schedule 1 are aware of and will comply with this clause.

8. PURPOSE OF COLLECTION OF INFORMATION

8.1 **Information** collected for inclusion in **CAS**, including **personal information**, is collected for the following purpose:

- To inform transport policy and regulations.
- To design and prioritise a range of network user behaviour and road safety initiatives.
- To support funding applications for network and road safety improvements.
- To monitor and evaluate the effectiveness of road safety initiatives.
- To provide statistics to support a wide range of public information requests.

*All **information** collected for use in **CAS** is collected in order to obtain and analyse accurate data in respect of traffic crashes in New Zealand. Analysis of the **information** allows the **NZTA**, other government agencies, and **agencies** engaged in activities that contribute to the furtherance of road safety in New Zealand to make significant contributions to crash prevention and wider road safety in New Zealand. This includes contributing to the achievement of the Government policy objectives recorded in New Zealand's Road Safety Strategy 2010-2020, Safer Journeys.*

9. PURPOSE OF DISCLOSURE OF INFORMATION

- 9.1 **Information**, including **personal information** that is disclosed by the **NZTA** to agencies is disclosed only for the purpose specified at clause 8 above in accordance with the following:

*The purpose specified at clause 8 above is, in part, achieved by the **information** being disclosed by the **NZTA** to specified **agencies** to the extent necessary to achieve the purpose.*

*The **NZTA** discloses **information**, including **personal information**, only for the purpose specified at clause 8.*

*The **NZTA** believes on reasonable grounds that such disclosure is one of the purposes in connection with which the **information** was obtained.*

10. PURPOSE OF USE OF INFORMATION BY CUSTOMERS AND USERS

- 10.1 By entering into this **agreement** the **customer** agrees that it will only allow **use** of the **information** from **CAS** for the purpose specified in clause 8 and that no other **use** of the **information** is permitted by this **agreement**.
- 10.2 Without limiting any other provision of this **agreement** the **customer** acknowledges that any other **use** or misuse of the **information** by the **customer** or **user** is a breach of this **agreement** and may, in accordance with clause 5 above, result in the immediate suspension of this **agreement** by **NZTA** without notice, and subsequent termination of this **agreement**.

11. CONFIDENTIALITY

- 11.1 Notwithstanding anything in this **agreement** to the contrary, the **parties** agree that where the **customer** or **user** uses any **personal information** from **CAS**, or where the **NZTA** discloses any **personal information** to the **customer** or **user**, such **use** or disclosure is subject to an obligation of confidence.

12. ACCURACY OF INFORMATION

- 12.1 The **parties** acknowledge that **information** contained in **CAS** is sourced from a number of **agencies**. While the **NZTA** endeavours as far as is practicable to ensure the accuracy of the **information**, it provides no warranty as to the accuracy of the **information**, and is not liable to the **customer** or **user** or any third party in relation to reliance upon, or the accuracy of, the **information**.

13. RESPONSIBILITIES OF THE NZTA

- 13.1 The **NZTA** will make all reasonable endeavours to provide a secure and reliable system allowing the **customer** and **user** to **use CAS** at all times other than between 5pm and midnight each Saturday, such time being set aside for **CAS** maintenance.
- 13.2 **CAS** will generally be available to the **customer** and **user** unless there is a planned outage, a scheduled backup process, a maintenance window, or an unforeseen interruption.
- 13.3 The NZTA will provide support to the customer and users between the hours of 8.00am and 5.00pm Monday to Friday (other than on public holidays). **Use of CAS** outside these hours will be on an unsupported basis.
- 13.4 Requests for service to NZTA are to be placed as follows:

Email **istservice@nzta.govt.nz**. A System Support Analyst will log the call and advise the call number by return email or,

Telephone **0800 805 263**. This call will be answered by the **NZTA** Service Desk who will log the call as required. You will be given a call number for future reference.

14. RESPONSIBILITIES OF CUSTOMER AND USERS

- 14.1 The **customer** and **user** must ensure that **information used** is protected by such safeguards as it is reasonable in the circumstances to take against loss, unauthorised access, use, modification, or disclosure, and other misuse of any **information**.
- 14.2 The **customer** must ensure it provides to any person using **CAS** the resources necessary for the person to have the necessary skills, experience and training to **use CAS** in accordance with this **agreement**.
- 14.3 In particular the **customer** must do everything reasonably within its power to prevent any access, **use** or disclosure of the information other than that which is expressly provided for in this **agreement**, and will not, or allow a **user** to, further disclose any **information** unless the **information** is in a form in which individuals cannot be identified.
- 14.4 No **customer** or **user** may, in any circumstances, make contact with any person identified in **CAS** other than enforcement officers who attended a traffic crash.
- 14.5 The **customer** must allow, and provide reasonable assistance in connection with, any audit of **CAS use** conducted by the **NZTA**.

15. INDEMNITY AND LIMITATION OF LIABILITY

- 15.1 The **customer** indemnifies the **NZTA** against, and is liable to the **NZTA** for, all costs, losses, or damages incurred by the **NZTA** that may result directly or indirectly from any breach of this **agreement** by the **customer** or **user**, or any **use** or misuse of **CAS**, to the extent that the **NZTA** has not caused or contributed to such costs, losses or damages.
- 15.2 The indemnity and liability described in this clause operates between the **parties** and the **customer** agrees that it will be vicariously liable to the **NZTA** in relation to the **use** or misuse of **CAS** or for any other breach of this **agreement** by any person named in Schedule 1.
- 15.3 Subject to clause 15.1, the **NZTA** shall not be liable under or in connection with this **agreement**, including but not limited to the **use**, misuse, operation, or failure of operation of **CAS**, whether in tort, contract or any other basis, for any direct, indirect or consequential loss suffered or incurred by the **customer** or **user** or any third party.

16. ASSIGNMENT

- 16.1 The **NZTA** may assign its rights and responsibilities under this **agreement** upon 30 days notice to the **customer**.
- 16.2 The **customer** will not in any way assign, transfer, charge or otherwise deal with any of its rights or obligations under this **agreement** without the prior written consent of the **NZTA**. Any such consent will be given at the sole discretion of the **NZTA** but will not be withheld arbitrarily. For the avoidance of doubt, any change in the controlling shareholding, or other actual control, of the **customer** is, for the purposes of this **agreement**, an assignment.

17. DISPUTES

- 17.1 The **parties** agree to use their best endeavours to resolve any dispute or difference that may arise under this **agreement**.
- 17.2 The following process will apply to disputes
- (a) a **party** must notify the other if it considers a matter is in dispute;
 - (b) the contact persons will attempt to resolve the dispute through direct negotiation;
 - (c) if the contact persons have not resolved the dispute within 28 days of notification, they will refer it to the **parties'** senior managers for resolution;
- and

- (d) if the senior managers have not resolved the dispute within 28 days of it being referred to them, the **parties** shall refer the dispute to mediation or some other form of alternative dispute resolution as agreed by the **parties**.
- 17.3 If a dispute is referred to mediation, the mediation will be conducted:
- (a) by a single mediator agreed by the **parties** or if they cannot agree, appointed by the Chair of LEADR NZ Inc;
 - (b) on the terms of the LEADR NZ Inc standard mediation agreement; and
 - (c) at a fee to be agreed by the **parties** or, if they cannot agree, at a fee determined by the Chair of LEADR NZ Inc.
- 17.4 Each **party** will pay its own costs of mediation or alternative dispute resolution under this clause.
- 17.5 Subject to clause 5, if there is a dispute each **party** will continue to perform its obligations under this **agreement** as far as practicable given the nature of the dispute.
- 17.6 Each **party** agrees not to start any court action in relation to a dispute until it has complied with the process described in this clause unless court action is necessary to preserve a **party's** rights.

18. GENERAL

- 18.1 This **agreement**, including any variation, records everything agreed between the **parties** in relation to the **use** of **CAS**. It replaces any previous communications, negotiations, arrangements or agreements that the **parties** had with each other relating to the **use** of **CAS** before this **agreement** was executed, whether they were verbal or in writing.
- 18.2 Nothing in this **agreement** constitutes a legal relationship between the **parties** of partnership, joint venture, agency, or employment.
- 18.3 Neither **party** has authority to bind or represent the other **party** in any way or for any purpose.

19. EXECUTION OF AGREEMENT

- 19.1 This **agreement** is executed by being signed below first by a person authorised to execute the **agreement** on behalf of the **customer**, and then by being signed below by a person authorised to execute the **agreement** on behalf of the **NZTA**. For the avoidance of doubt, this **agreement** is not executed, and does not come into effect, until the date it is signed by the person authorised to execute the **agreement** on behalf of the **NZTA**.

Signed for and behalf of the **customer**:

Signature

Full name

Position

Date

Signed for and behalf of the **NZTA**:

Signature

XXXX
Full name

XXXX
Position

*Date (being the date of execution of this **agreement**)*

SCHEDULE 2 - CONFIDENTIALITY UNDERTAKING

For each **user** listed in Schedule 1, a separate signed CONFIDENTIALITY UNDERTAKING (SCHEDULE 2) is required.

To: New Zealand Transport Agency
Victoria Arcade
50 Victoria Street
Private Bag 6995
Wellington 6141
New Zealand

NOTE: Terms in bold have the meanings specified in clause 3 of the Agreement to Use the Crash Analysis System.

I, XXXXXX (name, place, title)

have been engaged by XXXXXX (name of CAS **customer**).

Part of my role for this **customer** is to **use CAS** in accordance with the Agreement to Use the Crash Analysis System dated XXXXX (date of **agreement**) between the **customer** and the NZ Transport Agency.

I acknowledge and agree that:

- (a) I have read and understand clauses 2, 3, 7, 8, 9, 10, 11, 12, 14 and 15 of the **agreement** referred to above; and
- (b) in the course of my **use** of **CAS**, I will receive or have access to **personal information**; and
- (c) I will:
 - (i) **Use** the **personal information** from **CAS** only for the purpose specified in clause 8 of the agreement referred to above; and
 - (ii) keep the **personal information** confidential at all times; and
 - (iii) comply with all applicable obligations and requirements of the **agreement** referred to above.

Signature

Full Name: xxxx

Title: xxxx

Date: xxxx

SCHEDULE 3 - LEVEL OF ACCESS TO CAS

Level 1 with these access rights:

1. Access to page 3 of a Traffic Crash Report comprising section 12 (Crash Diagram) and section 13 (What Happened).
2. Access to analytical and mapping functions. Personal and vehicle information recorded in specific data fields is not available.

SAMPLE