

# Contract for Online Delivery of Criminal Conviction Histories



| The Parties  |  |   |  |
|--|--|---|--|
| <b>Ministry of Justice</b>   |  | <b>(Ministry)</b>   |  |
| Justice Centre<br>19 Aitken Street<br>Wellington   |  |   |  |
| And  |  |   |  |
|  |  | <b>(Customer)</b>   |  |
| <b>Company number:</b>   |  |   |  |
| The Contract   |  |   |  |
| <b>Agreement</b>   |  |   |  |
| The Ministry agrees to provide the Customer with the delivery of criminal conviction histories on the terms and conditions contained in this Contract. |  |   |  |
| Customer's Addresses for Notices (reference clause 15)   |  |   |  |
| For the attention of:  |  |   |  |
| Email:   |  |   |  |
| Ministry's Address for Notices (reference clause 15)   |  |   |  |
| Delivery address:  |  | Criminal Records Unit, Ministry of Justice, Justice Centre, 19 Aitken Street, Wellington 6011 |  |
| Postal address:  |  | DX Box SX10088, Wellington 6011   |  |
| Email:   |  | CCHonline@justice.govt.nz   |  |
| Acceptance   |  |   |  |
| In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.  |  |   |  |
| For and on behalf of the <b>Ministry:</b>  |  | For and on behalf of the <b>Customer:</b>   |  |
| _____  |  | _____   |  |
| (signature)  |  | (signature)   |  |
| <b>Name:</b>   |  | <b>Name:</b>  |  |
| <b>Position:</b>   |  | <b>Position:</b>  |  |
| <b>Date:</b>   |  | <b>Date:</b>  |  |

## 1. **Background**

- 1.1. The Ministry carries out criminal conviction history (CCH) searches in response to requests from individuals seeking a copy of their CCH, or from Third Parties (including government departments) when a Named Individual authorises release of their CCH to that Third Party.
- 1.2. The Ministry has developed an online platform (**Online CCH Service**) through which Third Parties may make CCH Requests.
- 1.3. This Contract governs the provision of the Online CCH Service to Third Parties.

## 2. **Term**

- 2.1. This Contract commences on the Commencement Date, and remains in force until terminated by either Party in accordance with clause 13.

## 3. **Registration by Ministry of third party as Customer**

- 3.1. The Ministry may register a Third Party as a Customer, including if the Third Party:
  - 3.1.1. agrees to comply with the requirements in this Contract, including the CCH User Guide;
  - 3.1.2. agrees to comply with the Ministry's privacy, confidentiality and security requirements (clause 10), and agrees they will be able to demonstrate such compliance upon the Ministry's request; and
  - 3.1.3. signs the 'Acceptance' section on page 1 of this Contract and sends a copy of the same to the Ministry.

## 4. **Provision of Online CCH Service by Ministry**

- 4.1. Upon receiving a CCH Request from the Customer that complies with this clause 4, the Ministry will conduct a search of its CCH information for the purpose of identifying a CCH matching the identity of the Named Individual to whom that CCH Request relates.
- 4.2. Subject to clause 4.3, within 3 Working Days of receiving the CCH Request, the Ministry will provide a written Response to the Customer either stating that:
  - 4.2.1. it holds a CCH that matches the identity of the Named Individual, and includes a copy of that CCH; or
  - 4.2.2. there is no CCH that appears to match the identity of the Named Individual.
- 4.3. Where the Ministry is unable to confirm a CCH result is a match for the Named Individual, but believes one or more search results warrant the Ministry making further inquiries to determine whether or not one of those results relates to the Named Individual:
  - 4.3.1. the Ministry may, but is not obliged to, seek further information from the Customer about the Named Individual to determine whether there is a match;
  - 4.3.2. if the Ministry seeks such further information relating to the Named Individual from the Customer, the Customer will endeavour to respond promptly, and where necessary, liaise with Named Individual to obtain that further information;
  - 4.3.3. if the Customer is unable for any reason to provide such further information to the Ministry, the Customer will advise the Ministry promptly;
  - 4.3.4. the Ministry will provide a written Response in accordance with clause 4.2.1 or 4.2.2; and

- 4.3.5. the Customer acknowledges that the Ministry may not be able to provide a final written Response within 3 Working Days of receiving the CCH Request in this instance, and that this will depend in part on the Customer's timely assistance, however, the Ministry will endeavour to provide a prompt written Response in these circumstances.

## **5. Concealment of Criminal Convictions Pursuant to Law**

- 5.1. The Customer acknowledges that a Named Individual's CCH or specific convictions that form a part of that CCH will automatically be concealed by the Ministry where the Criminal Records (Clean Slate) Act 2004 applies, or where a conviction must otherwise not be disclosed in accordance with law.

## **6. Customers' Obligations**

- 6.1. The Customer is responsible for assigning a Contract Manager who will be responsible for the oversight of, and day-to-day liaison with the Ministry in relation to the Online CCH Service.
- 6.2. The Customer will create, submit and manage CCH Requests through the Online CCH Service in accordance with the requirements set out in this Contract and the CCH User Guide. If there is any conflict or difference between this Contract and the CCH User Guide, the Customer will notify the Ministry and the Ministry will provide directions.
- 6.3. The Customer acknowledges that the Ministry may amend the CCH User Guide from time to time, that the Ministry will provide Notice to the Customer of any such amendments, and the Customer agrees to comply with any such amendments.
- 6.4. The Customer warrants to the Ministry that it will:
  - 6.4.1. before submitting a CCH Request through the Online CCH Service, ensure that each Named Individual completes and signs an Authorisation consenting to the Ministry providing their CCH to the Customer;
  - 6.4.2. obtain Valid Identification from each Named Individual and ensure that such Valid Identification matches the identity of that Named Individual before submitting that Named Individual's CCH Request to the Ministry;
  - 6.4.3. comply with the Evidence of Identity requirements, as described in the CCH User Guide;
  - 6.4.4. retain a copy of the Authorisation and Valid Identification for each CCH Request for at least 3 months from the date that the Customer submits that CCH Request to the Ministry; and
  - 6.4.5. upon request by the Ministry made within 3 months of the Ministry's receipt of a CCH Request, provide the Ministry with copies of the Authorisation and Valid Identification relating to the CCH Request. The Customer will provide this information within 3 Working Days of receiving such a request from the Ministry.
- 6.5. The Customer will ensure that all its Personnel who have access to the Online CCH Service, and any information provided by the Ministry through the Online CCH Service understand the requirements of using the Online CCH Service, in accordance with the CCH User Guide and the obligations in this Contract, including to:
  - 6.5.1. disclose a Conflict of Interest to the Customer (in relation to a Named Individual specified in a CCH Request that the Personnel is or may be responsible for handling through the Online CCH Service); and

- 6.5.2. not use or disclose any Confidential Information (as set out in clause 10), except as provided for in this Contract;
- 6.6. Where the Customer submits CCH Requests on behalf of other third parties (for example, where the Customer provides a pre-employment checking service for others), the Customer must ensure that such third parties are aware of their obligations to provide all applicable information and documentation required under this Contract. The Customer is responsible for ensuring compliance with the terms of this Contract.

## 7. **Charges**

- 7.1. The following Charges are payable by the Customer:
  - 7.1.1. the fee for each CCH Request submitted by the Customer to the Online CCH Service is \$11.00 excluding GST;
  - 7.1.2. where a Customer is liable for GST, as indicated by the Customer prior to registration, GST will be added by the Ministry to the total amount due; and
  - 7.1.3. where the Customer is paying on invoice from an overseas bank account, the Ministry will add to the invoice the bank charge incurred to process the payment.
- 7.2. The Ministry may review and amend the Charges, at its discretion, during the term of this Contract. The Ministry will provide Notice to the Customer of any changes to the Charges and the date of application of the new Charges. The new Charges will be applied to CCH Requests submitted from the date of application of the new Charges.

## 8. **Payment and payment method**

- 8.1. The Customer must elect prior to registration, to pay the Charges either by credit/debit card or on receipt of an invoice from the Ministry (**on invoice**).
- 8.2. Where the Customer elects to pay on invoice, the Charges will be based on the number of CCH Requests submitted by the Customer to the Online CCH Service per month. The invoice will provide a breakdown of how the Charges have been calculated.
- 8.3. For payment on invoice, the Customer will pay the Charges by the 20<sup>th</sup> calendar day of the month following the month in which an invoice is issued to the Customer by the Ministry. If the Charges are not received in accordance with the timeframe specified in this clause 8.3, the Ministry may:
  - 8.3.1. suspend or terminate the delivery of Online CCH Service under this Contract until the Charges are paid in full; and/or
  - 8.3.2. provide Notice to the Customer requiring the Customer to change their payment method from payment on invoice to payment by credit/debit card.

## 9. **Ministry's Liability**

- 9.1. The Ministry is not liable for any damages, losses, liabilities, costs or expenses (whether that liability arises under contract (including any indemnity), tort (including negligence), by statute or otherwise) in relation to the Online CCH Services caused by:
  - 9.1.1. any delay in the provision of the Online CCH Service under clause 4, including a delay in providing a written Response or unavailability of the CCH Online Service;
  - 9.1.2. the inaccuracy of any CCH Request or Response;
  - 9.1.3. the Customer's reliance on the content of the information provided in a CCH or Response;

- 9.1.4. any exercise of any right, remedy or discretion the Ministry is entitled to exercise; or
- 9.1.5. anything for which the Customer accepts responsibility or liability under this Contract;

and nor is the Ministry liable for any:

- 9.1.6. indirect, special consequential, incidental, reliance or punitive damages, losses, liabilities, costs or expenses;
- 9.1.7. the cost of re-advertising or re-procuring replacement Personnel; or
- 9.1.8. loss of revenue, loss of business or business opportunities, profits, anticipated savings, reputation or goodwill.

## 10. **Privacy, Confidentiality and Security Requirements**

- 10.1. The Customer must comply with the Privacy Act 2020 and any other applicable legislation, principles, industry codes and policies (**Privacy Laws**) in relation to data that is personal information (as defined in the Privacy Act 2020\*) and in particular, where the Customer has access to, stores, process or transmits data under or in connection with this Contract, the Customer must:
  - 10.1.1. ensure each of its Personnel to whom such data is disclosed or to be disclosed (in any manner) in accordance with this Contract, complies with Privacy Laws;
  - 10.1.2. not do anything or omit to do anything with such data that will cause the Ministry to breach any Privacy Law;
  - 10.1.3. keep the data (including any backup archives of data) in the possession or control of the Customer secure, managed and protected, and implement and maintain adequate measures to prevent the loss of, unauthorised access, use, processing, disclosure, accidental loss or destruction of or damage to, and any other misuse relating to, the data;
  - 10.1.4. limit access to the data only to those Personnel who need to use it for the purpose for which it was obtained;
  - 10.1.5. unless otherwise instructed by the Ministry or required by law, securely dispose of or return data to the extent that it is held by the Customer, once it is no longer required for the purposes of the provision of the Online CCH Services in such a manner so that it can no longer be recovered or reconstructed;
  - 10.1.6. ensure that all information disclosed by the Customer to the Ministry, and to the Customer by the Ministry, about individuals is to be treated as Confidential Information;
  - 10.1.7. only use, disclose or retain Confidential Information for the purposes anticipated in the Online CCH Service and those Personnel who have access to it must comply with the confidentiality obligations set out in this Contract as if each of them individually were a party to it;
  - 10.1.8. ensure that each of its Personnel completes such privacy training as may be reasonably required to ensure the Customer's compliance with this clause;
  - 10.1.9. address any reasonable specific security needs of the Ministry in relation to the Online CCH Service, as notified from time to time; and

10.1.10. ensure that it has processes in place to identify and report any breaches of the Privacy Laws in relation to the Confidential Information.

10.2. The Customer must notify the Ministry immediately if there is a breach of any term in this clause 10 (Privacy, Confidentiality and Security Requirements), including if Confidential Information has been disclosed to a third party (whether deliberately or inadvertently) in breach of this Contract. Upon such notification, the Customer will provide the Ministry all assistance and cooperation reasonably required by the Ministry to rectify any such breach.

10.3. The Customer acknowledges that breach of this clause 10 is a material breach.

## 11. **Intellectual Property**

11.1. The Ministry owns the Intellectual Property Rights and all data included in any Response.

11.2. This Contract does not impart on the Customer any right to, or right of access to, any data and information contained on any of the Ministry's systems.

## 12. **Review and Audit**

### *Right to audit*

12.1. Without limiting its other rights and remedies under this Contract, the Ministry may carry out an audit for the purpose of reviewing the Customer's compliance with any of its obligations under the Contract.

12.2. The Ministry's right to audit under clause 12.1 may only be exercised once in any 12-month period, except that the Ministry may carry out an audit or review at any time without restriction where:

12.2.1. the Ministry suspects on reasonable grounds that the Customer has materially breached its obligations under the Contract;

12.2.2. the Ministry seeks to audit performance or compliance with privacy, security, and confidentiality obligations (clause 10); or

12.2.3. where the Ministry's internal or external auditors undertake a review of the Online CCH Service.

12.3. Nothing in this clause 12 requires the Ministry to undertake an audit before exercising any other rights or remedies the Ministry has under this Contract.

### *Audit requirements*

12.4. If the Ministry conducts an audit under clause 12:

12.4.1. the audit will be conducted during Working Days and following no less than ten (10) Working Days' Notice to the Customer;

12.4.2. where the audit is being undertaken under clause 12.2.1, the notice period referred to in cl 12.4.1 is not required to be complied with;

12.4.3. the audit may, at the Ministry's option, be undertaken by the Ministry or an independent auditor appointed by the Ministry. In this situation, the Ministry will advise/consult the Customer and, if required by the Customer, these persons will enter into an appropriate confidentiality agreement with the Customer;

12.4.4. the Ministry will use its reasonable endeavours to minimise any disruption to the Customer's business during the course of the audit;

- 12.4.5. the Customer must co-operate in a timely, comprehensive, collaborative and open manner in respect of any audit (such co-operation to include complying with any requests for information or assistance related to the audit made by the Ministry or the person appointed by the Ministry to undertake the audit); and
- 12.4.6. the Customer must promptly provide:
  - (a) access and assistance to the Ministry in respect of the audit; and
  - (b) any explanations, information and documentation that the Ministry may require in relation to the audit.
- 12.5. Upon the conclusion of the audit, the results of that audit will be reviewed by the Ministry, and:
  - 12.5.1. where such information identifies issues on the part of the Customer in the performance of its obligations under the Contract, the Parties will meet to review the results and determine what measures are required and the time needed to address any such issues;
  - 12.5.2. the Customer will implement such steps as the Ministry may reasonably require for the Customer to remedy any such issues within a reasonable timeframe specified by the Ministry, and the Customer will provide regular progress updates to the Ministry;
  - 12.5.3. the Customer will advise the Ministry when they have remediated the outstanding issues and ensure that the Customer's future use of these Online CCH Services is in accordance with the requirements set out in the Contract; and
  - 12.5.4. where the Customer has not addressed the remediation required within the specified timeframe, the Ministry reserves the right to terminate this Contract in accordance with clause 13.

#### *Cost of audit*

- 12.6. Each Party will be responsible for its own costs in relation to any audit undertaken in accordance with this clause 12, except where the audit reveals a material breach by the Customer of the Contract, in which case the Customer will reimburse the Ministry for its actual and reasonable costs in carrying out the audit.

### **13. Termination**

- 13.1. Either Party may terminate this Contract at any time by providing Notice to the other Party. Termination will have effect from (in the case of termination by the Customer) the date Notice is received by the Ministry, or (in the case of termination by the Ministry) the date of the Ministry's Notice of termination.
- 13.2. The Ministry may terminate this Contract on Notice with immediate effect if the Customer has materially breached the terms of this Contract. The Customer will not be entitled to a refund of any Charges paid to the Ministry in advance if the Ministry terminates this Contract under this clause.

### **14. Consumer Protection Legislation Does Not Apply**

- 14.1. The Parties agree:
  - 14.1.1. that both the Ministry and the Customer are, for the purposes of this Contract and the Consumer Guarantees Act 1993, in trade; and
  - 14.1.2. that the Online CCH Service is acquired by the Customer in trade.
- 14.2. The Parties agree to contract out of the following:

14.2.1. the Consumer Guarantees Act 1993; and

14.2.2. sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations) and 13 (false or misleading representations) of the Fair Trading Act 1986.

## 15. Notices

15.1. All Notices must be:

15.1.1. in writing and delivered by email to the relevant Party's address for Notices stated on page 1; and

15.1.2. sent by the appropriate manager or person having authority to do so.

15.2. A Notice will be considered to be received at the time the email enters the recipient's information system and is not returned undelivered or as an error, but a Notice received after 5pm on a Working Day or on a day that is not a Working Day will be considered to be received on the next Working Day.

## 16. General

16.1. This Contract may only be varied by agreement in writing signed by the Parties.

16.2. The clauses that by their nature should remain in force on expiry or termination of this Contract do so, including clauses 10 (Privacy, Confidentiality, and Security Requirements), 11 (Intellectual Property) and 12 (Review and Audit), 15 (Notices), 16 (General), and 17 (Definitions) and will survive the termination or expiry of this Contract.

16.3. This Contract, including any variations, records everything agreed between the Parties relating to the Services. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Services before this Contract was signed, whether they were verbal or in writing.

16.4. This Contract will be governed and interpreted in accordance with the laws of New Zealand.

16.5. If any part or provision of the Contract is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Contract will be binding on the Parties.

16.6. The Ministry will not be liable for any act or failure to act if the act or omission arises from any cause beyond its control. These events may include (but are not to be limited to) acts of God, strikes, lockouts, riots, acts of war, earthquakes, floods, fire, communication line failures, power failures, epidemic or pandemic, government action or direction, change in law, or computer or processing system failure.

16.7. Failure on the part of the Ministry to enforce this Contract will not be construed as a waiver of such terms and conditions or a waiver of the right to enforce those terms and conditions at a later time.

16.8. In this Contract, unless the context otherwise requires:

16.8.1. words importing the singular will include the plural and vice versa;

16.8.2. clauses and other headings are for ease of reference only and do not affect the interpretation of the Contract;

16.8.3. a reference to any law or 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;



- 16.8.4. a reference to any agreement, plan or document is to that agreement or document as amended, novated, supplemented or replaced from time to time in accordance with its terms;
- 16.8.5. any appendices and attachments form part of the Contract and a reference to a clause, appendix or attachment is a reference to a clause, appendix or attachment of or to the Contract unless otherwise stated;
- 16.8.6. the rule of construction known as the contra proferentem does not apply to this Contract;
- 16.8.7. "including" and similar words do not imply any limitation;
- 16.8.8. dates and times are New Zealand time; and
- 16.8.9. a reference to dollar or \$ is a reference to the lawful currency of New Zealand and excludes GST.

## 17. Definitions

**Authorisation** means written consent provided by a Named Individual authorising the disclosure of criminal conviction information to the Customer carried out by the Named Individual completing and signing the Application.

**Application** means a completed Request for Criminal Conviction Report – Third Party application form duly signed by a Named Individual.

**CCH** means criminal conviction history, which is a record of the criminal offences that a person has been convicted of in a court.

**CCH Request** means a request to the Ministry to undertake a search for a CCH in respect of a Named Individual.

**CCH User Guide** means the document prepared by the Ministry, as amended from time to time.

**Charges** means the total amount payable by the Customer to the Ministry as described in clause 7 .

**Commencement Date** means the date that this Contract is signed by both Parties or, in the event that the Parties sign this Contract on different days, the latter of the two dates on which the Parties sign this Contract.

**Confidential Information** includes data and personal information (as defined in the Privacy Act 1993), that is by its nature confidential, provided by either Party or a third party 'in confidence', or either Party knows or ought to know is confidential, including information collected from a Named Individual and submitted to the Ministry to submit a CCH Request and the Response provided by the Ministry in providing the Online CCH Service. This includes both the Named Individual's Valid Identification and Authorisation.

**Conflict of Interest** A Conflict of Interest arises if a Party or its Personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Contract. It means that their independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

- (a) actual: where the conflict currently exists
- (b) potential: where the conflict is about to happen or could happen; or
- (c) perceived: where other people may reasonably think that a person is compromised.

**Contract** means this Contract for Online Delivery of Criminal Conviction Histories.

**Customer** means a third party registered by the Ministry, at its discretion, who fulfils the Ministry's requirements in accordance with clause 3.

**GST** means goods and services tax payable under the Goods and Services Tax Act 1985 (New Zealand) at the rate prevailing from time to time, including any tax levied in substitution for that tax.

**Intellectual Property Rights** means all intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights recognised or protected by law.

**Named Individual** means a person named in a CCH Request.

**Notice** means a communication from one Party to the other that meets the requirements of clause 15.

**Online CCH Service** means the Ministry's online platform used for submitting CCH Requests and receiving CCHs in response to a CCH Request.

**Party** means either the Ministry or the Customer; **Parties** means the Ministry and the Customer collectively.

**Personnel** means all individuals engaged by either Party in relation to this Contract or the delivery of Services. Examples include: the owner of the business, its directors, employees, subcontractors, agents, external consultants, specialists, technical support and co-opted or seconded staff.

**Proof of Identity** means, for a Named Individual who does not otherwise have Valid Identification, a form prepared by the Ministry to be completed by a person who can confirm the Named Individual's identity.

**Response** means a written notification from the Ministry to the Customer in relation to the CCH Request. This may be a request for further information and/or the final outcome of the request.

**Third Party** means a Customer who has agreed to be bound by the terms of this Contract in relation to the CCH Online Service.

**Valid Identification** means a copy of a Named Individual's passport that includes the signature page, New Zealand firearms licence, New Zealand driver's licence, their RealMe identity verified by the third party through RealMe, a Proof of Identity, or a statutory declaration.

**Working Day** means a day of the week between the hours of 8:30am and 5:00pm inclusive, other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday;
- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (f) any New Zealand public holiday that applies to the Wellington region.