



**Te Tari Taiwhenua
Internal Affairs**

Agency Confirmation Agreement

**This Agreement is entered into under s10 of the Identity Information
Confirmation Act 2012**

Between

The Chief Executive of the Department of Internal Affairs

And

The Registrar-General of Births, Deaths and Marriages

And

The Electoral Commission

SCHEDULE 1

PARTIES

This Agreement is made between:

The Chief Executive of the Department of Internal Affairs, 46 Waring Taylor Street, Wellington; and

The Registrar-General of Births, Deaths and Marriages, 120 Victoria Street, Wellington; and

The Electoral Commission, an Independent Crown Entity established under section 4B of the Electoral Act 1993. Level 10, 34-42 Manners Street, Wellington

START DATE

17/10/2018

BACKGROUND

1. The Confirmation Service allows an Agency to check, either directly or via an Intermediary, whether Identity Information provided to it by a customer is consistent with information recorded in the Applicable Databases to aid in its verification of the individual's identity.
2. Under s8 of the Identity Information Confirmation Act 2012 an Identity Information Check can only be carried out if the Agency or Intermediary is party to a confirmation agreement with the Responsible Officials.
3. The Confirmation Service cannot provide any assurance that the individual providing Identity Information to an Agency is who they claim to be. Rather, it checks whether the information provided is consistent with information held by the Responsible Officials in the births, citizenship, or passport databases. It is the responsibility of the Agency to establish that the information relates to the person who provided it.

Purpose of this Agreement

4. The purpose of this Agreement is to allow The Electoral Commission to undertake Identity Information Checks to confirm whether an Individual's Identity Information is consistent with information recorded in the Applicable Databases

Applicable Databases to which this Agreement applies (tick)

- Births
 Citizenship
 Passports

Agreement Managers

	Responsible Officials' Agreement Manager	Agency Agreement Manager
Name:	David Philp	Mandy Bohte
Position:	General Manager Partners and Products	National Manager Enrolment & Community Engagement
Address:	45 Pipitea St, Wellington New Zealand	Level 10, 34-42 Manners Street, Wellington
Phone:	██████████	██████████
Email:	██████████@dia.govt.nz	██████████@elections.govt.nz

Addresses for Notices

	Responsible Officials' address	Agency address
Attention:	David Philp	Mandy Bohte
CC:		
Delivery address:	45 Pipitea St, Wellington New Zealand	Level 10 34-42 Manners Street Wellington
Postal address:	PO Box 805 Wellington 6140 New Zealand	PO Box 3220 Wellington 6140
Email address:	██████████@dia.govt.nz	██████████@elections.govt.nz

Address for invoices

Attention:	Finance
CC:	
Postal address:	PO Box 3220 Wellington 6140
Email address:	finance@elections.govt.nz

5. Identity Information Check (per Applicable Database, excluding Deaths) is as set out below:

Tier	1	2	3
Annual Identity Information Check volume (subject to clause 11 below)	0 to 100,000	100,001 to 250,000	250,001 +
Charge per check	\$0.40	\$0.25	\$0.15
Credit note applied on Tier volume being exceeded	\$15,000	\$15,000	n/a

6. Annual Identity Check Volumes are based on cumulative total volumes over the course of an annual period.


7. The Department will determine the tier that applies to the Agency in any annual period based on the volume of Identity Information Checks made by the Agency in the previous annual period. For example, if the Agency achieves 120,000 Identify Information Checks in the 2017/2018 Annual Period, then the Department may apply the Tier 2 charges from the commencement of the 2018/2017 Annual Period. Unless otherwise agreed, Tier 1 will apply during the first annual period under this Agreement.
8. Once a Tier's upper volume level is exceeded in the applicable annual period:
 - a. the unit Charge for subsequent Identity Information Checks Volumes is applied to further Identity Information Checks in that annual period; and
 - b. the Department will issue a credit note for the applicable amount specified in the above table.
9. The volumes of Identity Information Checks are reset to zero on the first day of any new annual period.
10. Where a credit note is issued under clause 8b above:
 - a. that credit note will be set-off against all valid Invoices and other liabilities of the Agency under this Agreement;
 - b. if this Agreement is terminated (other than under sections 57, 58 or 59 of Schedule 2), subject to 8a above the Department will pay the Agency the outstanding balance of any credit note as at the date of termination (if any); and
 - c. if this Agreement is terminated under sections 57, 58 or 59 of Schedule 2, all credit notes will be cancelled and the Department will have no obligation to make any payment in relation to any credit note.
11. If in relation to any annual period:
 - a. the Agency has been charged under Tier 2 or Tier 3 (the "**applied Tier**") from the commencement of that annual period in accordance with clause 7 above; and
 - b. at the end of that annual period the total volume of Identity Information Checks made in that annual period fall within the range of a lower Tier (the "**achieved Tier**"),

then, the Department will invoice the Agency, and the Agency will pay the Department, an amount equivalent to the difference between the total charges payable under that applied Tier and the total charges that would have been payable if the charges under achieved Tier had been applied in relation to that annual period.

12. For the purpose of calculating charges, the first annual period will be deemed to start on the Start Date and to end on the following 30 June (First Annual Period) and thereafter the annual period will commence on 1 July and end on 30 June of the following calendar year (or on expiry or termination of the Agreement, if sooner).


EXECUTION

Signed by the Chief Executive,
Department of Internal Affairs or
delegate


Signature Dion Chamberlain
Te Pou, Manawatu

17/10/18
Date

Signed by the Registrar-General,
Births, Deaths and Marriages


Signature
17/10/18
Date

Signed by The Electoral Commission


Signature

5/10/18
Date

Mandy Bohle
Name

Manager Electoral
Position & Community Engagement

SCHEDULE 2

TERM

1. This Agreement starts on the Start Date and will continue in force until terminated in accordance with its terms.

PARTIES' OBLIGATIONS

2. The parties agree to:
 - a. act in accordance with this Agreement from the Start date;
 - b. act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other; and
 - c. discuss matters affecting this Agreement or the delivery of the Confirmation Service, whenever necessary; and
 - d. notify each other immediately of any actual or anticipated issues that could:
 - i. significantly impact on the services or the Charges; or
 - ii. receive media attention; and
 - e. comply with all applicable laws and regulations including, without limitation, the IIC Act and the Privacy Act 1993.

Responsible Officials' obligations

3. The Responsible Officials will:
 - a. host and maintain the Confirmation Service;
 - b. provide the Confirmation Service connection to the point of the Confirmation Service Interface;
 - c. ensure that the Agency has access to the Shared Workspace; and
 - d. perform the Services with all due care, skill and diligence, employing techniques and methods of a high quality and standard, using suitably trained and qualified personnel who possess the requisite knowledge, skills, and experience.

Agency's obligations

4. The Agency will:
 - a. co-operate with the Responsible Officials personnel in connection with their operation and safe-guarding of the Confirmation Service;
 - b. provide appropriate assistance, where reasonably requested by the Responsible Officials, in carrying out any audit of the Agency's use of the Confirmation Service or related systems or suppliers;
 - c. provide to the Responsible Officials, where reasonably requested, copies of documents relevant to the Confirmation Service, for example, the Agency's privacy or Information security policy, and any evidence of their implementation;
 - d. advise the Responsible Officials promptly of any Confirmation Service anomalies, suspicious or unusual usage, or complaints and assist the Responsible Officials in the investigation of such anomalies, usage or complaints;
 - e. provide the Agency's connection to the Confirmation Service Interface and all elements of the Agency's system beyond the Confirmation Service Interface;
 - f. maintain the interface between the Agency's systems and the Confirmation Service Interface and ensure that the security and privacy of individuals is protected to the greatest extent practicable; and
 - g. notify the Responsible Officials of any network changes or certification renewals that may impact on any part of the Confirmation Service.

SERVICES

5. The Services the Agency will connect to and use are:
 - a. the Confirmation Service.

USE OF THE CONFIRMATION SERVICE

6. All Identity Information Checks must be carried out in accordance with this Agreement.

7. All Identity Information Checks must be carried out by an Agency only for the purposes stated in clause 4 in Schedule 1 of this Agreement.
8. The Agency must provide the Responsible Officials the information required by Appendix A to Schedule 2 of this Agreement to enable the Responsible Officials to assess whether it is appropriate to enter into an agreement with the Agency. The information provided is incorporated into this Agreement. If any of the information provided in Appendix A to Schedule 2 changes during the term of this Agreement, the Agency must give notice to the Responsible Officials within 5 Business Days of the change.

Integration

9. The Agency must maintain certification as required in the Technical Agreement.

Users

10. If the Agency's system requires a User to undertake Identity Information Checks or testing the Agency may provide its Users with access to the Confirmation Service. The Agency will only provide access to Users who require access to enable the Agency to carry out Identity Information Checks, or to carry out testing, in accordance with this Agreement.
11. The Agency must assign each User a User ID that enables the Responsible Officials to monitor each User's use of the Confirmation Service. The Agency must ensure:
 - a. the User ID is recorded in a way that enables the Agency to identify the person assigned that User ID;
 - b. each User accesses the Confirmation Service using only the User ID assigned to that User;
 - c. Users do not share access or disclose information that would enable another person to access the Confirmation Service;
 - d. Users are familiar with the terms of this Agreement; and
 - e. Users access the Confirmation Service in accordance with this Agreement.

12. The Responsible Officials may prevent any User from accessing the Confirmation Service if they suspect, on reasonable grounds, that the User has acted or might act in a manner contrary to this Agreement.
13. The Agency must remove a User's access to the Confirmation Service promptly if the User is no longer employed or engaged by the Agency, or no longer requires access on behalf of the Agency.

Obtaining individual's consent

14. Before an Agency undertakes an Identity Information Check on an individual the Agency must obtain the Individual's consent.
15. Consent may be obtained from the individual on a one-off basis for each Identity Information Check or on an ongoing basis for a series of Identity Information Checks.
16. The Individual may withdraw consent before an Identity Information Check is carried out, or any further Identity Information Checks are carried out if consent is given on an ongoing basis.
17. An Identity Information Check must not be carried out if the individual has not consented, or if consent has expired or been withdrawn.
18. Before an Agency undertakes an Identity Information Check, the Agency must give the Responsible Officials an assurance that the Individual's consent has been obtained. The Responsible Officials will not perform an Identity Information Check until such an assurance is received.

Withdrawal of consent

19. The Agency must provide a reasonably accessible means to enable an individual to withdraw his or her consent for an Identity Information Check. An individual who consents to an Identity Information Check may withdraw the consent before:
 - a. the check is carried out, in the case of a consent given on a one-off basis;
 - or

- b. all of the checks, or any further checks, are carried out, in the case of a consent given on an ongoing basis.

Expiry of consent

- 20. If an individual gives his or her consent to undertake checks on an ongoing basis, the Agency must treat that consent as having expired if:
 - a. the individual ceases to be a customer of the Agency; or
 - b. If 12 months has elapsed since the date on which consent was given.

Alternative process

- 21. The Agency must offer individuals an alternative process to confirm their Identity if an individual's Identity Information cannot be confirmed using the Confirmation Service because, for example, there is no information recorded in an Applicable Database about the individual, or the individual has not given his or her consent to an Identity Information Check.
- 22. The alternative process must include the ability for the individual to provide Identity documents directly to the Agency.

Adverse action

- 23. If the result of an Identity Information confirmation check causes, in whole or in part, an Agency to take adverse action against an individual, the Agency must:
 - a. give the individual a reasonable opportunity to make submissions or to be heard; and
 - b. take any submissions into account before taking adverse action, including undertaking an Identity Information Check, or alternative Identity check, on any further Identity Information the individual provides.

IDENTITY INFORMATION CHECKS

- 24. On receiving the individual's Identity Information from the Agency, the Confirmation Service will carry out a search of the Applicable Databases

selected by the Agency in Schedule 1 for any recorded information about the individual.

25. If it is impracticable for the Confirmation Service to carry out a search of any or all of the Applicable Databases for any reason, the Confirmation Service will advise the Agency that the Identity Information Check cannot be processed and may ask the Agency to resubmit the individual's Identity Information.
26. After carrying out an Identity Information Check, the Confirmation Service will provide the Agency one, or a combination, of the following results:

Applicable Database	Births	Deaths	Passports	Citizenship
	Consistent		Consistent	Consistent
	Not Consistent		Not Consistent	Not Consistent
	Exception		Exception	Exception
	Exception – name change information exists for this individual		CAN – Travel document status has been cancelled. A newer travel document may have been issued	Exception – Individual is no longer a NZ Citizen
	Exception – individual is recorded as deceased	Exception – individual is recorded as deceased	EXP - Travel document is not valid for travel	
			LSS / LST / STL - Travel document is not a valid document	

27. No additional information about an individual beyond the results outlined in clause 26 will be provided to the Agency.
28. The Agency must ensure that all information obtained by an Identity Information Check (and any backup archives of the information) in its possession or control from time to time is kept secure, managed, protected, and disclosed or otherwise dealt with in accordance with the Privacy Act 1993, the IIC Act and the terms of this Agreement. Without limiting the foregoing, the Agency must not transfer, distribute or on-sell (in any form) information obtained by an Identity Information Check or any extract, subset, analysis, summary, table or other collation or modified version outside the control of the Agency, and shall not use the information to support any non-solicited marketing or to build any derivative or competing services.
29. Subject to clause 30, the Agency must ensure that the results of an Identity Information Check provided under clause 26 are accessible by only its Users. The Agency must ensure no other person, including the individual who is the subject of the Identity Information Check, can directly access the results of an Identity Information Check.
30. The Responsible Officials may approve the Agency to provide direct access to the results of an Identity Information Check to people beyond those set out in clause 29, if the Responsible Officials determine it is appropriate to do so.

PROTECTION OF CONFIDENTIAL INFORMATION

31. Subject to clauses 32, 33, and 34, each party will treat as confidential and not disclose to any third party nor use for its own or another's benefit (other than for the purposes of this Agreement), any Confidential Information that is the Confidential Information of any other party.
32. A party may disclose Confidential Information:
 - a. if that information was known, or becomes known, to the public through no act or default of the party;
 - b. that the party is required to disclose:
 - i. by court order, law, any Minister of the Crown or any Parliamentary office or body; or

- ii. under the rules of any stock exchange or by the Reserve Bank of New Zealand, so long as the party provides written notice to the other parties of the required disclosure promptly upon receipt of notice of the required disclosure or (in the case of an existing requirement) a reasonable time before complying with the requirement (to the extent it is permitted to do so by law);
 - c. that was lawfully known to the party prior to the date it was received;
 - d. that becomes available to the party from a source other than another party to this Agreement provided that the recipient has no reason to believe the source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under law from disclosing the information;
 - e. that has been or is independently developed by the party;
 - f. to any professional adviser for the purposes of rendering professional services to a party and in relation to this Agreement;
 - g. to the extent that such disclosure is authorised by this Agreement;
 - h. in accordance with the Privacy Act 1993; or
 - i. if such disclosure is approved for release with the prior written consent of the party from whom the Confidential Information is first received.
33. The Agency may disclose the Responsible Officials' Confidential Information to its personnel and to its professional advisers who need to know the same for the sole purpose of enabling the Agency to perform its obligations and exercise its rights under this Agreement. The Agency will ensure that its Personnel are aware of and comply with the confidentiality obligations in this Agreement.
34. The Responsible Officials may disclose the Agency's Confidential Information to its personnel, its service providers (including potential service providers) who need to know the same in connection with the operation and management of the Confirmation Service and this Agreement, or the Privacy Commissioner, and the Responsible Officials will ensure that their personnel are aware of and comply with confidentiality obligations in this Agreement.
35. Neither party may disclose the other party's Confidential Information to any contractor or subcontractor of a party unless the relevant contractor or subcontractor has given a written confidentiality undertaking to the disclosing party. All such undertakings from third parties must be provided to the other

party to this Agreement on request.

36. The Responsible Officials may publish the standard template form of this Agreement, with or without redaction and in any form, including on any website or workspace. To avoid doubt, such publication shall not include disclosure of commercially sensitive information relating solely to the Agency.

SECURITY BREACH

37. If a party becomes aware or suspects that any unauthorised person has obtained, attempted to obtain, or may obtain access to the Confirmation Service or any Confidential Information or has used or attempted to use the Confirmation Service or any Confidential Information for purposes not authorised or permitted by the terms of this Agreement:
 - a. that party will immediately notify the other party;
 - b. the Responsible Officials may notify the Government Chief Privacy Officer;
 - c. the Responsible Officials will notify the Privacy Commissioner in all situations where the Government Chief Privacy Officer is notified;
 - d. the Agency will take such steps as are available to it to identify those unauthorised persons, to recover the Confidential Information from those persons and to comply with the Responsible Officials' directions; and
 - e. where such actual, attempted or potential access or such use or attempted use was caused by the Agency or any subcontractor, the Agency must, after consultation with the Responsible Officials, make such changes to its operations (at its own cost) that are necessary to prevent, as far as is practicable, the occurrence of the same or similar breaches of security in the future.
38. In the event of an actual or potential serious threat to, or breach of the security of, the Confirmation Service or Confidential Information, the Responsible Officials or the Agency may take such further action as that party considers necessary.
39. The Agency acknowledges the importance of safeguarding individuals' personal information and enabling the Responsible Officials and the Agency to comply with the Privacy Act 1993, the Privacy Breach Guidelines, and the IIC Act.

CHARGES

40. The Agency will pay the Charges. The Charges exclude GST.
41. A separate Charge applies to an Identity Information Check in each Applicable Database, excluding the Deaths Applicable Database.
42. Charges for Identity Information Checks will start when the Agency begins undertaking Identity Information Checks in the production environment.
43. The Department will invoice the Agency monthly in arrears for Services delivered during that month. The Agency must pay the Charges within one month of receiving an invoice.
44. If the Agency disputes any invoice, or portion of any invoice, the Agency must notify the Department within 10 Business Days of receiving the invoice. The Agency must pay any portion of the invoice that is not in dispute. The Agency may withhold payment of the disputed portion until the dispute is resolved.
45. The Department may vary any Charge or any aspect of the method used for calculating any Charge (as set out in Schedule 1) by giving 20 Business Days' Notice to the Agency. If the Agency undertakes an Identity Information Check following the 20 Business Day Notice period, it will be deemed to have accepted the variation to the Charge or Charges.

INTELLECTUAL PROPERTY

46. All Confirmation Service Intellectual Property, together with all modifications, adaptations or developments to, or based on, it (whether made by the Responsible Officials or not) is and remains the property of the Responsible Officials or their licensors and the Agency will obtain no rights or interests in the Confirmation Service Intellectual Property (or any component of it) except as provided in clause 47.
47. The Responsible Officials grant to the Agency a royalty-free, worldwide, non-exclusive licence for the term of this Agreement to enable the Agency to access, possess, store and use the Confirmation Service Intellectual Property,

which is required for the Agency to use the Services in accordance with this Agreement.

48. All Agency Intellectual Property, together with all modifications, adaptations or developments to, or based on, it made by the Agency or its agents is and remains the property of the Agency, and the Responsible Officials will obtain no rights or interests in the Agency Intellectual Property (or any component of it) except as provided in this clause 48.
49. The Agency grants to the Responsible Officials a royalty-free, worldwide, non-exclusive licence to access, possess, store, use and reproduce the Agency Intellectual Property, as the Responsible Officials may reasonably require to provide the Confirmation Service or perform their obligations under this Agreement. All Intellectual property rights in such modifications, adaptations or developments made by the Responsible Officials (or its nominee) to the Agency Intellectual Property shall vest in the Agency upon their creation.

DISPUTES

50. The parties agree to use their best endeavours to resolve any dispute that may arise under this Agreement, using the following process:
 - a. a party must give Notice to the other if it considers a matter is in dispute
 - b. the Agreement Managers will attempt to resolve the dispute through direct negotiation
 - c. If the Agreement Managers have not resolved the dispute within 10 Business Days of Notice, they will refer it to the parties' senior managers for resolution
 - d. if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the parties shall refer the dispute to mediation or some other form of alternative dispute resolution.
51. 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 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.

52. Each party will pay its own costs of mediation or alternative dispute resolution under clause 50.

SUSPENSION AND TERMINATION

Suspension

53. The Responsible Officials may suspend the Agency's access to the Confirmation Service if the Agency's connection adversely affects the Confirmation Service or any other person's use of the Confirmation Service.
54. The Responsible Officials will, where practicable, provide reasonable notice of any suspension. If the Responsible Officials suspend access to the Confirmation Service, both parties will work collaboratively to enable the Responsible Officials to restore access as soon as possible.
55. The Responsible Officials may suspend the Agency's access to the Confirmation Service if:
- a. the Agency has failed to pay any Charges by the due date for payment of those Charges, and
 - b. the Responsible Officials gives the Agency notice of the non-payment, and
 - c. the Agency fails to pay those charges within 20 Business Days of such notice.
56. The Agency may, acting reasonably, suspend its own access to the Confirmation Service if the connection to the Confirmation Service adversely affects the Agency's own services or systems. The Agency will, where practicable, provide reasonable notice of any such suspension. If the Agency does suspend access, both parties will work collaboratively to enable the Agency to restore access as soon as possible.

Termination

57. The Responsible Officials may terminate this Agreement immediately if the Agency fails to pay Charges within 20 Business Days following suspension under clause 55.

58. The Responsible Officials may terminate this Agreement immediately if satisfied that it is no longer appropriate to continue with the Agreement, having regard to:
- a. the nature of the Agency's undertaking or activity and whether the Agency has a genuine need to use the Confirmation Service in carrying out that undertaking or activity; or
 - b. the Agency's policies and practices in relation to the security of Information and the privacy of Individuals.
59. The Responsible Officials may terminate this Agreement immediately, by giving Notice, if the Agency:
- a. becomes bankrupt or Insolvent
 - b. has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed
 - c. becomes subject to any form of external administration
 - d. ceases for any reason to continue in business
 - e. does something or fails to do something that, in the Responsible Officials' opinion, results in damage to the Responsible Officials' reputation or business or the reputation or business of the Crown
 - f. has a Conflict of Interest that in the Responsible Officials' opinion is so material as to impact adversely on the Responsible Officials or the Crown, or
 - g. provides information to the Responsible Officials that is misleading or Inaccurate in any material respect.
60. If a decision is made that the Responsible Officials will no longer provide some or all of the Confirmation Service, the Responsible Officials may terminate this Agreement in whole or in part by giving 90 days' prior written notice to the Agency.
61. The Agency may terminate this Agreement by giving 60 days' Notice to the Responsible Officials.
62. The Responsible Officials may terminate this agreement immediately, by giving Notice, if the Agency has breached, or is likely to breach, the Agreement. This clause is subject to clause 63.

63. If an Agency breaches, or is likely to breach, this Agreement (defaulting party) and the Responsible Officials reasonably believe that the failure can be remedied or avoided, the Responsible Officials must give a Notice (default Notice) to the Agency.
64. A default Notice must state:
 - a. the nature of the failure or likely failure
 - b. what is required to remedy or avoid it, and
 - c. the time and date by which it must be remedied or avoided.
65. The period allowed to remedy or avoid the failure must be reasonable given the nature of the failure or likely failure.
66. If the Agency does not remedy or avoid the failure or likely failure as required by the default Notice, the Responsible Officials may terminate this Agreement immediately by giving a further Notice.
67. If the Responsible Officials give a default Notice to an Agency, the Responsible Officials may withhold Identity Information Checks until the failure or likely failure is remedied or avoided as required by the default Notice.

Consequences of termination or expiry

68. On termination or expiry of this Agreement, the Agency must, if requested by the Responsible Officials, immediately return or securely destroy all Confidential Information and other material or property belonging to the Responsible Officials.
69. The termination or expiry of this Agreement does not affect those rights of each party which accrued prior to the time of termination or expiry, or relate to any breach or failure to perform an obligation under this Agreement that arose prior to the time of termination or expiry.
70. If this Agreement is terminated, the Agency :

- a. will only be liable to pay Charges that were due for Identity Information Checks or other services delivered before the effective date of termination, and
 - b. may recover from the Responsible Officials, or set off against sums due to the Responsible Official, any Charges paid in advance that have not been incurred.
71. On termination or expiry of this Agreement the clauses that by their nature should remain in force do so, including clauses 28, 31, 32, 34, 35, 36, 40, 41, 42, 43, 44, 45, 47, 48, 50, 51, 52, 68, 69, 70, 71, 92, 93, and 94.

EXTRAORDINARY EVENTS

72. Neither party will be liable to the other for any failure to perform its obligations under this Agreement where the failure is due to an Extraordinary Event.
73. A party who wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other party as soon as reasonably possible. The Notice must state:
- a. the nature of the circumstances giving rise to the Extraordinary Event
 - b. the extent of that party's inability to perform under this Agreement
 - c. the likely duration of that non-performance, and
 - d. what steps are being taken to minimise the impact of the Extraordinary Event on the performance of the obligations.
74. If the Agency, acting reasonably, requires the Confirmation Services to be supplied during the period affected by an Extraordinary Event, then despite clause 64, the Agency may terminate this Agreement immediately by giving Notice.
75. If a party is unable to perform any obligations under this Agreement for 20 Business Days or more due to an Extraordinary Event, the other party may terminate this Agreement immediately by giving Notice.

VARIATION

76. This Agreement may be varied by further agreement between the parties.

77. A variation must be agreed by all parties and recorded in writing and signed by all parties. This clause is subject to clauses 45, 78 and 79.
78. The Responsible Officials may vary this Agreement at any time on 20 Business Days' Notice if a new term or condition is required by legislation. If the Agency undertakes an Identity Information Check following the 20 Business Day Notice period, it will be deemed to have accepted the variation.

Consultation with Privacy Commissioner about variation

79. If the parties propose to vary this Agreement to contain new or amended terms or conditions that are materially different from the standard terms or conditions, the Responsible Officials must consult the Privacy Commissioner about those terms or conditions before varying the Agreement.
80. The requirement to consult the Privacy Commissioner under clause 79 does not apply if the variation relates to:
 - a. the Charges payable under this Agreement or the method of calculating those charges; or
 - b. terms or conditions that are minor or incidental in nature.
81. The Privacy Commissioner may, at intervals not shorter than 12 months, require the Responsible Officials to:
 - a. review the terms or conditions of any confirmation agreement (whether or not they are standard terms or conditions); and
 - b. report on the outcome of the review to the Privacy Commissioner.
82. If, after reviewing the terms, the Privacy Commissioner and the Responsible Officials agree that amendments to the terms or conditions of a confirmation agreement are required, the Responsible Officials must request the Agency to vary this Agreement to include the amendments to the terms or conditions.
83. A variation to this Agreement under clause 82 applies only if the Agency agrees in writing.

NOTICES

Delivery of Notices

84. All Notices must be delivered by hand or sent by post, courier, or email to that party's address for Notices stated in Schedule 1.
85. Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.

Receipt of Notices

86. A Notice will be considered to be received:
 - a. If delivered by hand, on the date it is delivered
 - b. If sent by post within New Zealand, on the 3rd Business Day after the date it was sent
 - c. If sent by post internationally, on the 7th Business Day after the date it was sent
 - d. If sent by courier, on the date it is delivered
 - e. If sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.
87. A Notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.

AGREEMENT MANAGER

88. The persons named in Schedule 1 as the Agreement Managers are responsible for managing the Agreement, including:
 - a. managing the relationship between the parties
 - b. registering and deregistering Users
 - c. overseeing the effective implementation of this Agreement, and
 - d. acting as a first point of contact for any issues that arise.

Changing the Agreement Manager

89. If a party changes its Agreement Manager it must tell the other party, in writing, the name and contact details of the replacement within 5 Business Days of the change.

GENERAL

Effect and application of Agreement

90. As between the Responsible Officials and any other public service or non-public service department:
- a. this Agreement is intended to have effect as a memorandum of understanding that does not give rise to legally enforceable obligations (the reason being that departments are part of the indivisible Crown); and
 - b. clauses 50(d), 51 and 52 do not apply.
91. As between the Responsible Officials and any entity or organisation other than a public service or non-public service department, this Agreement is intended to have effect as a legally enforceable agreement.

Limitation of liability

92. There is no cause of action against the Crown, or a Minister of the Crown, or the Responsible Officials, or a delegate of the Responsible Officials, or an employee or a contractor of the Department, to recover damages for any loss or damage that is due directly or indirectly to the use of the Confirmation Service for an Identity Information Check.
93. Clause 92 applies whether the loss or damage is caused by any person taking any action or failing to take any action, so long as the act or omission occurred in the exercise or performance of his or her functions, duties, or powers under any of the following:

- a. the Identity Information Conformation Act 2012;
- b. the Births, Deaths, Marriages, and Relationships Registration Act 1995;
- c. the Citizenship Act 1977;
- d. the Passports Act 1992.

94. A person is not exempted from liability under clause 92 for any act or omission to act that constitutes bad faith or gross negligence on the part of that person.

Power of Responsible Officials to act

95. The Responsible Officials may act independently of each other to take any action, or perform any obligation, under this Agreement that relates only to an Applicable Database that the relevant Responsible Official administers.

Reporting requirements

96. The Agency must keep records, for monitoring purposes, of all Identity Information Checks undertaken on its behalf, including the number of checks undertaken, the Applicable Databases checked, and any Users that have undertaken checks.

97. The Agency must provide a copy of the records kept under clause 96 within 10 Business Days if requested by the Responsible Officials.

List of Agencies

98. The Responsible Officials will publish the name of every Agency that is a party to a confirmation agreement on a publicly accessible Internet site.

No assignment

99. The Agency will not assign, transfer, declare any trust over or otherwise deal with all or any part of its rights or responsibilities under this Agreement without the prior written consent of the Responsible Officials.

New Zealand law, currency, and time

100. This Agreement will be governed and Interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars. Dates and times are New Zealand time.

Waiver

101. If a party breaches this Agreement and the other party does not immediately enforce its rights resulting from the breach that:

- a. does not mean that the party in breach is released or excused from its obligation to perform the obligation at the time or in the future, and
- b. does not prevent the other party from exercising its rights resulting from the breach
- c. at a later time.

No Limitation to IIC Act

102. Nothing in this Agreement limits the IIC Act. The IIC Act prevails over this Agreement in the event of any inconsistency.

Definitions

Agency means a person or body of persons (whether corporate or unincorporate and whether in the public sector or private sector) that requires an Identity Information Check of a customer's Identity Information for its business purposes.

Agency Intellectual Property means all intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law that are owned by, or licenced to, the Agency.

Applicable Database means a database administered by the Responsible Officials containing:

- (a) birth information recorded under the Births, Deaths, Marriages, and Relationships Registration Act 1995; or
- (b) death information recorded under the Births, Deaths, Marriages, and Relationships Registration Act 1995; or
- (b) citizenship information recorded under the Citizenship Act 1977; or
- (c) travel document information recorded under the Passports Act 1992.

Business Day means a day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday, and public holidays. A Business Day starts at 8.30am and ends at 5pm.

Charges means the total amount payable as stated in Schedule 1

Chief Executive means the Chief Executive of the Department of Internal Affairs

Confidential Information means information that:

- (a) is Identity Information
- (b) is personal information as defined in the Privacy Act 1993
- (c) is by its nature confidential
- (d) is marked as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence'
- (e) is provided by either Party or a third party 'in confidence'
- (f) either party knows or ought to know is confidential, or
- (g) is of a sensitive nature or commercially sensitive to either party.

Confirmation Service means the service provided by the Responsible Officials that allows an Agency to undertake an Identity Information Check.

Confirmation Service Interface means the interface exposed to the Agency as defined in the Technical Agreement.

Confirmation Service Intellectual Property means all intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law that are owned by, or licenced to, the Responsible Officials including without limitation the Confirmation Service and any and all of the related documentation and materials.

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 Agreement. It means that its 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.

Department means the Department of Internal Affairs.

Extraordinary Event Is an event that is beyond the reasonable control of the party immediately affected by the event. An Extraordinary Event does not include any risk or event that the party claiming could have prevented or overcome by taking reasonable care. Examples include:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster
- (b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war, or
- (d) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties.

Identity Information means the following information about an individual:

- (a) in the Applicable Database containing birth information: registration number, surname, first/given name(s), date of birth, place of birth,

mother's first/given names, mother's surname, father's first/given names, father's surname.

- (b) In the Applicable Database containing citizenship information: certificate number, surname, first/given names, date of birth, country of birth.
- (c) In the Applicable Database containing travel document information: travel document number, surname, first/given names, date of birth, date of expiry.

Identity Information Check means a comparison of Identity Information supplied by an Agency to the Confirmation Service against information recorded in one of the Applicable Databases to confirm whether or not the information is consistent.

IIC Act means the Identity Information Confirmation Act 2012.

Integration means a connection between the Agency's environment and the Responsible Officials' environment to enable the Agency to access the Confirmation Service.

Notice means a communication from one party to another that meets the requirements of clauses 84 and 85.

Privacy Commissioner means the person who holds that office under section 12 of the Privacy Act 1993.

Registrar-General has the meaning given to it in s2 of the Births, Deaths, Marriages, and Relationship Registration Act 1995.

Responsible Officials means:

- (a) the Chief Executive for Applicable Databases that relate to the Citizenship Act 1977 or Passports Act 1992
- (b) the Registrar-General for Applicable Databases that relate to the Births, Deaths, Marriages and Relationship Registration Act 1995.

Services means the Services selected by the Agency in Schedule 1.

Shared Workspace means the secure Internet portal created by the Department where Intermediaries will be able to access Confirmation Service documentation including the most recent version of the Technical Agreement.

Start Date means the date this Agreement starts, as stated in Schedule 1.

Technical Agreement means the most recent version of the Technical Agreement document, available on the Shared Workspace.

User means a natural person engaged by the Agency and who uses the Confirmation Service on behalf of the Agency.

User ID means a unique identifier assigned by an Agency to a single User.