

# IMMUNITY AGREEMENT: CONDITIONAL GRANT OF IMMUNITY FOR AN INDIVIDUAL

**Agreement between:**

**The Secretary for Internal Affairs**

**and**

**[Name]**

## **Background**

1. This agreement is in connection with [describe the breach of the Gambling Act 2003] in [geographical area, e.g., New Zealand] in respect of which [Name] has applied for immunity from proceedings.

## **Interpretation**

2. For the purposes of this agreement:
  - ‘*Act*’ means Parts 1, 2 and 4 of the Gambling Act 2003 and includes all regulations, rules, minimum standards, licence conditions or other instruments made or continued under the Gambling Act 2003;
  - ‘*information*’ includes all information, documents, material and evidence of any kind whatsoever; including all oral, written and electronic information;
  - ‘*investigation*’ means the Department’s investigation into the breach of the Act; and
  - ‘*proceedings*’ means any Department initiated Court proceedings or administrative action relating to the breach of the Act.

## **Immunity Conditions**

3. The Department agrees not to bring any proceedings against [Name] for any act he/she may have committed in connection with the breach of the Act prior to the date of this agreement, upon the satisfaction of all the conditions set out below.
4. The above immunity does not extend to any criminal offences under other New Zealand law.

## **Preconditions for Immunity**

5. [Name] confirms that he/she:
  - (a) has ceased his/her involvement in the breach of the Act; and
  - (b) did not coerce any other *person* to participate in the breach of the Act

## **[Name] Immunity Conditions**

6. [Name] will:
  - (a) maintain continuous, complete and expeditious cooperation with the Department throughout the *investigation* and any ensuing *proceedings*;
  - (b) provide the Department promptly and voluntarily<sup>1</sup> with all *information* available to him/her regarding the existence, activities, operation and membership of the breach of the Act;
  - (c) preserve all relevant *information* and assist the Department to retrieve all relevant *information*;
  - (d) make available to the Department any personal *information* which is relevant or which the Department considers may assist the *investigation* or *proceedings*;

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<sup>1</sup> Any information provided to the Department is done so voluntarily and not as a result of the Department exercising its statutory information gathering powers.

- (e) make him/herself available for interviews and respond fully and truthfully to all inquiries of the Department in relation to the *investigation* and promptly inform the Department of any changes in his/her employment situation and/or contact details;
- (f) appear as a witness in any *proceedings* and provide full, frank and truthful evidence as to all matters within his/her knowledge, if required to do so by the Department;
- (g) will act as directed by the Department in relation to the breach of the Act<sup>2</sup>;
- (h) not, without the consent of the Department, disclose the fact of, or the content of the leniency application, the *investigation* or the *proceedings*, or any details regarding the leniency application, the *investigation* or the *proceedings*, except as required by law; and
- (i) inform the Department at least two working days (as defined in the Interpretation Act 1999) before making any disclosure relating to the leniency application, the *investigation*, or the *proceedings* which he/she considers is permitted by clause 6(h).

## **REVOCAATION**

7. If the Department at any time determines that [Name] has:

- (a) failed to meet any of the conditions of this agreement,
- (b) made false statements in this agreement, or
- (c) materially misled the Department as to any matter relevant to the *investigation* or *proceedings*,

the Department will not be bound by its grant of immunity to [Name] and will notify [Name] accordingly.

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<sup>2</sup> In exceptional circumstances an individual may be asked to continue to participate in breach of the Act activities in order to secure further evidence.

8. Before making any determination under clause 7 the Department will:
  - (a) notify [Name] orally that it is contemplating revocation of his/her conditional immunity and allow five working days (as defined in the Interpretation Act 1999) for a response to the Department's view and for any shortcomings to be addressed; and
  - (b) if the Department's views are not adequately responded to and the shortcomings addressed, set out in writing the shortcomings and allow [Name] a further ten working days (as defined in the Interpretation Act 1999), or such longer period as the Department may specify, to respond to the Department's views and to remedy the shortcomings.
  
9. If clause 7 applies, [Name] agrees:
  - (a) to waive any right he/she may otherwise have to assert that any *proceedings* brought against him/her by the Department arising out of or in connection with the breach of the Act are time-barred for purposes of any applicable limitation period under the Act, for a period of three years from the date of revocation of the immunity; and
  - (b) that he/she will not plead a limitation defence in respect of any such *proceedings* if they are commenced on or before a date three years from the date of revocation of the immunity.

### **Use of Information on Revocation**

10. The Department may use any *information* provided by [Name] under this agreement, for the purpose of conducting the *investigation* or *proceedings*, except for *proceedings* against which [Name] has been granted immunity.
  
11. If clause 7 applies and *proceedings* are initiated against [Name] after his/her conditional immunity was revoked, all statements or information provided to the Department by [Name] may be used against [Name] in any proceedings, insofar as is permitted by law.

### **Disclosure of Information**

12. The Department may disclose any *information* provided by [Name] for the purpose of:

- (a) conducting the *investigation*;
- (b) obtaining legal advice or in preparation for *proceedings*;
- (c) conducting *proceedings*, including making discovery; and
- (d) complying with the requirements of the law.

13. If the Department proposes to make any disclosure pursuant to clause 12:

- (a) an obligation of confidence will be imposed on the recipient of the *information* to the extent reasonably possible; and
- (b) to the extent it is reasonably able to do so, it will not disclose the source of any *information* or the identity of [Name].

14. If a request for disclosure of *information* pursuant to the Official Information Act 1982 (the OIA), the Department will to the extent reasonably possible, give [Name] an opportunity to:

- (a) make submissions to the Department regarding any proposed release of the *information*; and
- (b) take such action as [Name] considers necessary to resist the OIA request.

15. The Department will not waive any privilege that it may hold in relation to the *information* except to the extent that this is necessary for purposes of conducting the *investigation* or *proceedings*.

### **Continuing Obligations**

16. The obligations imposed on [Name] in this agreement, except for clauses 6(h), 6(i) and 9, are ongoing and continue until:

- (a) the Department advises [Name] that the *proceedings* have been concluded;
- (b) the conditional immunity of [Name] is revoked; or

(c) the Department advises [Name] that [Name] is exempted from the application of Part 2 of the Act or that his/her conduct does not breach Part 2 of the Act.

17. The obligations in clauses 6(h), 6(i) and 9 are ongoing and only cease when the Department advises [Name] that the *proceedings* have been concluded, or releases [Name] from these obligations in writing.
18. The obligations imposed on the Department in clauses 13, 14 and 15 are ongoing and continue despite the expiration of any other term of this agreement, unless [Name] releases the Department from these obligations.

### **Miscellaneous**

19. This agreement is the entire agreement between the Department and [Name] and supersedes all prior communications, understandings or representations whether oral or written between the Department and [Name].
20. This agreement shall be governed by, and construed in accordance with, the laws of New Zealand.
21. The failure of the parties to enforce any provision of this agreement at any time shall not operate as a waiver of that provision in respect of the particular act or omission or any other act or omission.
22. The parties agree that the New Zealand courts shall have jurisdiction to determine any proceedings arising out of or in connection with this agreement and the matters to which it relates, including any *proceedings* brought by the Department.



**Execution:**

SIGNED for and on behalf of  
[Name]

Name:  
Director/Duly Authorised Signatory  
in the presence of:

Witness Name:  
Witness Address:  
Witness Occupation:

SIGNED for and on behalf of  
The Department of Internal Affairs

Duly Authorised Signatory

Name:

in the presence of:

Witness Name:  
Witness Address:  
Witness Occupation: