

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause shall apply in these Conditions. Any other words in bold typeface and in inverted commas in these Conditions shall also constitute defined terms for the purpose of these Conditions.

Applicant: means an individual who is the subject of a Disclosure Application;

Application Fee: means the fee payable by the Applicant for each Disclosure Application submitted;

Application Form: means the form which an Applicant must complete for the purposes of a Disclosure Application;

Authorised User: means an employee or agent of the Customer who is the person or one of the people within the Customer's organisation registered with the Company for access to the Online Account and/or entitled to request that a Disclosure Application be processed;

Code of Practice: means the DBS' and the DS' code of practice for registered persons and other recipients of disclosure information through the DBS checking service;

Commencement Date: means the date of commencement of the Contract, being the date upon which the Company issues its written acceptance of the Customer's order pursuant to clause 2.3;

Company: means Cooke & Mellor Recruitment Ltd t/a Personnel Checks;

Conditions: means these Terms and Conditions of Supply;

Confidential Information: means any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential, or the information could reasonably be supposed to be confidential;

Contract: means any contract between the Company and the Customer for the supply of Services, incorporating these Conditions;

Contract Charges: means the charges payable to the Company for the Services, including all Fees payable to the Company under the Contract;

Contract Term: the Minimum Term and any subsequent Renewal Term, subject to earlier termination under clause 6.3 or clause 11;

Counter-signatory: means the person or people within the Company who are registered with the DBS to electronically and physically countersign Disclosure Applications;

Customer: means any person, firm, company or other organisation who is the addressee of the Company's quotation or acceptance of order issued by the Company and shall include any parent or subsidiary company of the Customer and any successor-in-title of the Customer and any company or entity arising (wholly or partly) by way of any merger, amalgamation, reorganisation or acquisition of the Customer;

DBS: means the Disclosure & Barring Service or Disclosure Scotland, as appropriate;

DBS Fee: means the fee charged by the DBS for processing a Disclosure Application;

Data Controller: has the meaning given in the Data Protection Act 1998;

Data Processor: has the meaning given in the Data Protection Act 1998;

Data Protection Legislation: means the Data Protection Act 1998 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner from time to time;

Disclosure: means the Disclosure result issued by the DBS in respect of the Applicant once a DBS check has been completed;

Disclosure Application: means an application made for a DBS check;

Fees: means the Application Fee and the DBS Fee and any other fees payable to the Company under the Contract;

Forecast: means where a Customer is a corporate entity, the number of Disclosure Applications the Customer intends to make via the Services within the following twelve months from the date of that forecast;

Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for

and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Minimum Term: means the period beginning on the Commencement Date and ending on the Second Anniversary Date;

Online Account: means the Customer-facing element of the System, which is accessed by the Customer using the username and password provided by the Company;

Online Service: means the Third Party Provider's e-Bulk interface and service which provides facilities that enable Disclosure Applications to be bulk-submitted electronically and to return information regarding the result of those applications by a similar means;

Paper Service: means a paper-based service (as distinct from the Online Service) for the submission of Disclosure Applications;

Personal Data: means data which relates to a living individual who can be identified from that data;

Registered Body: means an organisation which has satisfied the DBS' conditions of registration and has registered directly with the DBS to use its services;

Renewal Term: means a period of 12 months beginning on the day after the Second Anniversary Date, or beginning on the day after the last day of the immediately preceding Renewal Term, as applicable;

Second Anniversary Date: means the date falling 24 months after the Commencement Date;

Self-Service Version: means the version of the Online Service subscribed to by the Customer whereby certain aspects of the Online Service which would otherwise be administered by the Company will instead be administered by the Customer;

Sensitive Data: means Personal Data consisting of information as to racial or ethnic origin, political opinions, religious or other beliefs of a similar nature, physical or mental health or condition, sexual life, offences or alleged offences;

Services: means those services referenced in the Company's written acceptance of the Customer's order issued pursuant to clause 2.3, including the provision of any facility for the submission of Disclosure Applications and any training services so referenced;

System: means the Company's IT systems, the Website and the Online Service;

Third Party Provider: means the third party provider of the Online Service;

Umbrella Body: means a Registered Body which is able to act as an intermediary between an unregistered organisation and the DBS;

VAT: means value added tax chargeable under English law for the time being and any similar additional tax;

Website: means the Company's website at www.personnelchecks.co.uk;

Working Day: means a day other than Saturday, Sunday and any bank or public holiday;

Working Hours: means between 08.30 and 17.00 on a Working Day.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Any reference to "parties" means the parties to the Contract and "party" shall be construed accordingly.

1.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.5 Words in the singular include the plural and in the plural include the singular.

1.6 A reference to one gender includes a reference to the other gender.

1.7 A reference to a clause is to a clause of these Conditions.

1.8 Clause headings do not affect the interpretation of these Conditions.

1.9 Where the Customer contracts to receive the Services for or on behalf of one of its own clients (a "Client") and any right hereunder will be exercised and/or any obligation hereunder will be fulfilled, in either case by the Client rather than the Customer, the Customer shall ensure that the Client exercises all such rights and fulfils all such obligations in accordance with these Conditions. The Customer acknowledges that any failure of the Client to exercise all or any such rights or to fulfil all or any such obligations in accordance with these Conditions shall be deemed a breach of the Contract by the Customer.

2. APPLICATION OF TERMS

2.1 The Company will submit a proposal or quotation to the Customer which shall remain valid for the period stated in the proposal or quotation, or if no period is stated therein, for a period of 30 days from the date on which the proposal or quotation was issued.

- 2.2 The Company's proposal or quotation will be deemed to have been accepted when the Customer places a corresponding order with the Company.
- 2.3 No Contract shall be deemed to have arisen unless and until the Company accepts the Customer's order in writing.
- 2.4 The Customer acknowledges and agrees that the Company may commence performance of the Services on the Commencement Date and that the Contract shall subsist for the Contract Term.
- 2.5 Unless otherwise agreed in writing by the Company and subject to any variation under clause 2.6, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply).
- 2.6 Subject to clause 2.5, these Conditions apply to the supply of all Services by the Company and any variation to these Conditions or the Contract and any variation to or representations about any Services shall have no effect unless expressly agreed in writing by the Company.
- 2.7 The Contract may not be cancelled by the Customer without the Company's written consent and subject to the payment to the Company of all costs, charges and expenses incurred by the Company in connection with the Contract.
- 2.8 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this clause 2.8 shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.9 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them and they shall not form part of the Contract.
- 2.10 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- ### 3. SERVICES
- 3.1 Subject to the Customer paying the Contract Charges and agreeing to the restrictions set out in this clause 3 and in the other Conditions (and to satisfactorily passing a credit reference check if appropriate), the Company hereby grants to the Customer a non-exclusive, non-transferable licence to permit it, or if the Customer is a corporate entity, its Authorised Users, to use the Services during the Contract Term solely for the Customer's personal or internal business operations.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
- where an individual ceases to be an Authorised User, the Customer shall inform the Company of the same and the Company shall, at its absolute discretion, issue authorisation details and credentials for a replacement Authorised User;
 - each Authorised User shall keep a secure password for his use of the Services, and that each Authorised User shall keep his/her password confidential;
 - it shall maintain a written, up to date list of current Authorised Users and provide such list to the Company within 5 Working Days of the Company's written request at any time or times;
 - it shall permit the Company to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Company's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and
 - if any of the audits referred to in sub-clause (d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Company's other rights, the Customer shall promptly disable such passwords and the Company shall not issue any new passwords to any such individual.
- 3.3 The Company warrants (subject to the other provisions of these Conditions) that the Services shall be provided:
- with reasonable skill and care; and
 - in accordance with:
 - these Conditions;
 - the Code of Practice; and
 - the terms of any Service Level Agreement agreed between the parties ("SLA").
- 3.4 The Company's liability pursuant to clause 3.3 shall be limited to re-performing any Services found not to have been performed in accordance with the provisions of clause 3.3, provided that the deficiency in the performance of the Services is notified to the Company within 24 hours from completion of performance of the Services; otherwise, the Services shall be deemed to have been satisfactorily performed.
- 3.5 Subject to the provisions of clause 3.3 (b) (iii), the Company shall use its reasonable endeavours to meet any specified performance dates and times, but any such dates and times shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.6 Subject to the provisions of clause 3.7, the Company will, with respect to the Online Service:
- set up the Customer's Online Account and provide each Authorised User with a username and password to access the Online Account;
 - provide access to an online Application Form to enable Authorised Users to enter application data into the Online Account;
 - provide an ID verification section in the Online Account where the Authorised User(s) can verify the ID details of an Applicant;
 - provide appropriate initial training to each Authorised User in relation to undertaking identity verification checks and completing the Application Form;
 - provide reports on a chargeable basis for the Customer to review data for the purposes of quality checking and to verify as correct;
 - check and verify the data in the Application Form once the Applicant has completed the Application Form in full; and
 - if the Application Form is correct and ready to be transferred, the Company will transfer the data to the DBS in accordance with the DBS' requirements, including electronic signature of the form by the Counter-signatory; or
 - if the Application Form is incorrect or there are any queries or inconsistencies, seek clarification from the Applicant and require the Application Form to be amended or resubmitted as appropriate;
 - confirm and update receipt of Disclosure results within the Online Account;
 - notify the Customer of any queries received from the DBS via the Online Account;
 - receive from the DBS Disclosure results for a Disclosure Application and where the Disclosure is clear (i.e. where no records were found in relation to the Applicant), update the Online Account to enable the Authorised User to view the result.
- 3.7 Where the Customer has subscribed to the Self-Service Version, the Customer acknowledges that it, rather than the Company, shall be solely responsible for fulfilling certain obligations set out in clause 3.6. Specific details regarding those obligations will be provided by the Company during initial training, which will be appropriately modified so as to encompass training in the discharge of those obligations by the Customer.
- 3.8 Where the Customer is to utilise the Paper Service, the parties' respective rights and obligations hereunder in relation to the System shall be deemed appropriately modified, and:
- on receipt of the Application Form from the Company, the Customer is to ensure that the Applicant manually completes the relevant section of the Application Form; and
 - on receipt of the completed Application Form from the Customer, the Company will provide the Application Form to the DBS for processing as soon as reasonably possible and will communicate to the Customer any queries from the DBS.
- 3.9 If the Company has reasonable grounds to believe that a Disclosure Application is ineligible in light of the requirements of the DBS, then the Company may refuse to process the Disclosure Application until the Customer has provided sufficient information to satisfy the Company that the Disclosure Application is eligible.
- 3.10 In the event that any information revealed by a Disclosure Application and subsequent Disclosure is disputed by an Applicant or the Customer ("**Dispute**"), the Applicant is required to liaise directly with the DBS and the Company shall have no responsibility for liaising with any Applicant.
- 3.11 The DBS are committed to providing Disclosures for all volunteer applications that meet the DBS definition of a volunteer. This term is defined in the Police Act 1997 (Criminal Records) Regulations 2002 as: "*Any person engaged in an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses) doing something which aims to benefit some third party and not themselves or a close relative.*"
- 3.12 In order for an Applicant to qualify as a volunteer they must not:
- receive any payment (except for travel and other approved out-of-pocket expenses);

- (b) be on a placement;
- (c) be on a course that requires them to do this job role; or
- (d) be in a trainee position that will lead to a full time role/qualification.
- 3.13 The Customer confirms that it shall ensure that the Applicant understands the DBS' definition of a volunteer and that it shall procure that the Applicant ensures that any volunteer DBS application submitted by the Applicant to the Company shall meet with that definition. Should the DBS decline an application and/or find that an application does not meet the DBS' definition of a volunteer, the Customer accepts full responsibility and agrees to pay any additional Fees that may be incurred.
- 3.14 The Company offers a service to provide List 99 checks to the Education Industry. Should the Customer request a List 99 check from the Company, the Customer confirms that it has obtained permission from the Applicant to apply on the Applicant's behalf. These Conditions also apply without limitation to List 99 applications. Any information provided as a result of the List 99 check must be treated in the same way as DBS Disclosure information.
- 3.15 DBS Adult First is a service that can be used in cases where, exceptionally, and in accordance with the terms of Department of Health guidance, a person is permitted to start work with adults before a DBS Certificate has been obtained. This applies to adult services such as care homes, domiciliary care agencies and adult placement schemes where DBS Certificates are required by law. This service is only available to organisations who are eligible to access the DBS' Adult barred list and who have requested a check of the barred lists on their DBS application form. DBS Adult First is not a substitute for a DBS Certificate and providers must take care when making recruitment decisions prior to receiving a full DBS Certificate. DBS Adult First checks should be used only in exceptional circumstances and when absolutely necessary. The Customer confirms that they will only request DBS Adult First Checks if they are eligible for such service and understand the DBS Adult First guidance notes from the DBS.
- 3.16 The Company regularly monitors how long all levels of criminal record disclosures take to be processed and often quotes average turnaround times. The DBS searches the relevant Police databases and is responsible for the turnaround time of each application. The Company cannot guarantee any turnaround time for any level of check, as the turnaround is determined solely by the DBS.
- 4. SERVICE AVAILABILITY**
- 4.1 The Company shall, during the Contract Term, provide the Services to the Customer on and subject to these Conditions.
- 4.2 The Company shall use commercially reasonable endeavours to have an advisory service available, seven days a week. The Company shall use commercially reasonable endeavours to have The Online Service available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 6.00 am UK time; and
- (b) unscheduled maintenance performed outside Working Hours.
- 4.3 The Customer acknowledges that provision of the Online Service to the Customer by the Company is reliant on the Company's use of the Online Service provided and operated by the Third Party Provider. The Company provides no warranty or assurance for the reliability or availability of the Online Service.
- 4.4 The Company reserves the right at its sole discretion to suspend the Online Service for any period in the event that:
- (a) the Third Party Provider suspends the Online Service for any reason;
- (b) it becomes necessary to conduct any planned or emergency maintenance to the System or to undertake any investigation or works so as to prevent or resolve a security issue.
- 4.5 In the event that use of the Online Service is suspended for any period of time pursuant to these Conditions, the Company reserves the right to replace the Online Service with the Paper Service until such time as the Online Service is once again available. The Customer will be notified by the Company as soon as reasonably possible that the Paper Service is to be used.
- 5. THE CUSTOMER'S OBLIGATIONS**
- 5.1 The Customer shall:
- (a) procure that the Applicant ensures that all information provided to the Company, whether submitted through the Online Account or otherwise, is correct and complete;
- (b) be responsible for establishing and maintaining access to the System through a secure internet connection using appropriate telephony and computer equipment;
- (c) ensure that all Authorised Users who are to use the System receive suitable training from the Company;
- (d) ensure that Authorised Users use the Services in accordance with these Conditions and any instructions, manuals and security measures (including passwords) provided by the Company from time to time;
- (e) be responsible for protecting the safekeeping of passwords against unauthorised use, or disclosure to persons who are not Authorised Users;
- (f) immediately notify the Company if it becomes aware of any unauthorised use or disclosure of a password. Until such notice is given, the Company may assume that any act done in connection with the Services (by a person who uses a password that has been provided to the Customer), constitutes an act of the Customer;
- (g) ensure that the Company is promptly notified of any changes in respect of any Authorised Users (including where any individual ceases to be an Authorised User) and that the Company is provided with up-to-date contact details for all Authorised Users;
- (h) procure that the Applicant ensures that Disclosure Applications are only submitted in accordance with the appropriate eligibility criteria stipulated by the DBS for relevant positions of employment and reimburse the Company for any additional charges incurred, or payable by the Customer, where the Customer has failed to correctly fulfil this obligation;
- (i) procure that the Applicant correctly applies the DBS definition of "Volunteer" to assert eligibility for any Disclosure falling within that category and reimburse the Company for any additional charges incurred, or payable by the Applicant, where that definition has been incorrectly applied and also indemnify and hold the Company harmless against any resultant losses;
- (j) ensure that all Applicants for relevant positions of employment are notified in advance of the requirement for a Disclosure and are notified of the potential effect of a criminal records history on the recruitment and selection process and on any recruitment decision;
- (k) discuss the content of a Disclosure with the Applicant before withdrawing any offer of employment;
- (l) provide a copy of the Code of Practice to the Applicant on request; and
- (m) familiarise itself with the Company's policy for the Recruitment of Ex-offenders (the "Ex-offenders' Policy") which may be viewed at <https://www.personnelchecks.co.uk/media/1219/policy-statement-on-the-recruitment-of-ex-offenders.pdf> and shall:
- i. put in place an ex-offenders' policy which is substantially similar to and at least as onerous as the Ex-offenders' Policy; and
- ii. ensure that said ex-offenders' policy is maintained and adhered to throughout the Term; and
- iii. ensure that each Authorised User understands and abides by the ex-offenders' policy .
- 5.2 In relation to each Disclosure Application, the Customer shall:
- (a) procure that the Applicant ensures that the Application Form is completed fully and that the information provided is true and accurate, and that the Applicant has not knowingly made any false declarations;
- (b) ensure that it has verified and validated the identity of the Applicant in accordance with the DBS' guidance;
- (c) ensure that all Disclosure Applications are made in accordance with the Code of Practice and associated legislation.
- (d) confirm that they have the authority of the applicant to receive the disclosure information and certificate issued.
- 5.3 The Customer shall not and shall not permit any person to:
- (a) use the Services unless they are an Authorised User;
- (b) use the Services for any purpose other than as set out in these Conditions;
- (c) attempt to copy, duplicate, modify, alter, adapt, merge, create derivative works from, frame, mirror, republish, download, display, transmit, resell, sub-licence or distribute all or any portion of the System software and/or documentation (as applicable) in any form or media by any means;
- (d) attempt to decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the System software;
- (e) use the System in a manner that may harm or impair any other person's use of it;
- (f) use the System in an attempt to gain unauthorised access to any service, network, account or data by any means;

- (g) share Online Account details with any party not explicitly authorised by the Company and shall only share Online Account details for the purposes of the Contract;
- (h) access all or any part of the Services in order to build a product or service which compete with the Services;
- (i) use the Services to provide services to third parties, including the operation of a service bureau arrangement or outsourced service offering;
- (j) attempt to license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party;
- (k) attempt to obtain, or assist third parties in obtaining access to the Services;
- (l) remove, deface or obscure any proprietary notices, labels or marks associated with the Services;
- (m) disclose any information related to any Applicant or contained within any Disclosure Application or Disclosure to any member, partner, director, officer, employee, agent or subcontractor of the Customer (a "**Personnel Member**") unless a Personnel Member requires access to that information in the course of their specific duties in relation to recruitment and vetting processes.
- 5.4 The Customer shall:
- (a) ensure that it uses all reasonable endeavours to prevent any unauthorised access to, or use of, the System and the Services and in the event of any such unauthorised access or use, it promptly notifies the Company;
- (b) procure that the Applicant ensures that no data transmitted by the Applicant in connection with the Services contains viruses or any other computer code, files or programmes which may interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (c) procure that the Applicant ensures that any data uploaded to the System:
- does not contain any material that is illegal, obscene, pornographic, indecent or defamatory;
 - does not infringe any third party rights, including Intellectual Property Rights; and
 - does not contravene any applicable law or regulation.
- 5.5 The Customer shall not, without the prior written consent of the Company, at any time from the Commencement Date to the expiry of 12 months after the last date of supply of the Services or termination of the Contract, as applicable, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 5.6 Any consent given by the Company in accordance with clause 5.5 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.
- 6. CONTRACT CHARGES AND PAYMENT**
- 6.1 The Contract Charges shall be the charges set forth in the Company's written acceptance of the Customer's order issued pursuant to clause 2.3, subject always to any increase or additional charges which may be applicable in accordance with these Conditions or any variation which may arise subject to these Conditions.
- 6.2 All Fees are stated inclusive of VAT.
- 6.3 The Company reserves the right to obtain a credit reference check on the Customer prior to providing the Services. If such a check is not satisfactory in the opinion of the Company, the Company shall, without any liability to the Customer, be entitled to terminate the Contract with immediate effect, in which case the Company will refund to the Customer any Fees already paid by the Customer under the Contract.
- 6.4 The Customer shall procure that the Applicant pays the Application Fee and any other Fees that are payable to the Company shall be paid by the Customer.
- 6.5 Subject to clause 6.1, payment shall be calculated based on the Forecast provided by the Customer to the Company.
- 6.6 Where the Forecast is either in excess or short of the number of Disclosure Applications made in any given period, the Company reserves the right to adjust the Fees accordingly.
- 6.7 The Customer shall in good time provide valid, up-to-date and complete credit card details to the Company and any other relevant valid, up-to-date and complete contact and billing details which the Company requests.
- 6.8 The Company reserves the right to require the Customer to procure that the Applicant pays the Application Fee by way of direct debit where the Applicant makes such level of use of the Services which, in the Company's reasonable opinion, merits payment by direct debit. Where the Applicant is paying by direct debit, the Customer will procure that the Applicant pays the direct debit fee detailed on the Website (as amended from time to time) in each month that any Disclosure Applications are made. All applications for direct debit will be subject to a credit check.
- 6.9 Where payment is made by credit or debit card, the Customer shall also procure that the Applicant pays a credit or debit card transaction fee as set out on the Website.
- 6.10 The DBS Fee is set by the DBS, and is subject to change at the discretion of the DBS. The Company reserves the right to immediately pass on any change in the DBS Fee to the Customer but the Company will use reasonable endeavours to inform the Customer in advance of any change to the DBS Fee.
- 6.11 The Company reserves the right to increase the Contract Charges to reflect any increase in costs to the Company which is due to any factor beyond the control of the Company (including any increase in labour or materials costs or other costs of supply), any change in performance dates for the Services which is requested by the Customer and accepted by the Company and any other cause attributable to the Customer, including any delay caused by the Customer, or any failure of the Customer to give the Company adequate, accurate or complete information or instructions.
- 6.12 The Customer shall procure that the Applicant shall at all times ensure the accuracy, correctness and completeness of any data and/or Disclosure Application submitted via the Service. In the event of any inaccuracies errors or omissions, the Customer shall be liable to pay any additional charges imposed by the DBS or the Company, including any additional charges in connection with any complaint or dispute raised by an Applicant and including any charges for submitting a new or amended Disclosure Application.
- 6.13 Invoices shall be raised and the Contract Charges shall be paid to the Company in accordance with the requirements set out in the Company's written notification of acceptance of the Customer's order issued pursuant to clause 2.3. Any interim payments which are to be made under the Contract shall be made in the amounts and at the times stipulated. Unless the Customer has a credit account with the Company, all payments are to be made by credit or debit card and payment is due upon receipt of invoice.
- 6.14 Subject to clause 6.13, if the Customer has a credit account with the Company, the Company will send the Customer an invoice at the end of each month for all Disclosure Applications that have been countersigned and sent to the DBS for processing within that month. Payment is due on receipt of invoice.
- 6.15 The Customer hereby confirms that they authorise the Company to include Applicants' names on payment receipts and invoices. All Fees remain payable even if an Applicant declines an offer of employment, since fees are incurred for the processing of each Disclosure Application. All Disclosure Applications are non-refundable.
- 6.16 All amounts and fees stated or referred to in these Conditions:
- shall be payable in pounds sterling; and
 - are, subject to clause 6.3, non-cancellable and non-refundable.
- 6.17 The Company shall be entitled to increase the Application Fee upon 30 days prior notice.
- 6.18 Time for payment shall be of the essence of the Contract.
- 6.19 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that payment is tendered by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 6.20 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 6.21 All payments due under the Contract shall be made in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise in the absence of a valid court order requiring an amount equal to such deduction to be paid by the Company.
- 6.22 In the event that any sum due pursuant to the Contract is not duly paid to the Company, interest shall be paid to the Company on such sum from the due date for payment at the annual rate of 5 % above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this clause 6.

- 6.23 Without prejudice to clause 6.11, any failure to pay the Company any sum within 30 days of the due date for payment and/or the occurrence of any one or more of the events set forth in clause 11.3 (b)-(e) in relation to the Customer shall entitle the Company, at any time and without notice to the Customer and without limiting any other remedy available to the Company under these Conditions, the Contract, or otherwise:
- to disable the Customer's password, account and access to all or part of the Services and/or to suspend or cancel the performance of the Services;
 - to treat the Contract as having been repudiated by the Customer;
 - to terminate the Contract; and
 - to terminate any other subsisting contract with the Customer.
- 7. DATA PROTECTION AND CONFIDENTIALITY**
- 7.1 In course of performing the Services, the Company may process Sensitive Data and other Personal Data regarding individuals whose details have been made available to the Company by the Customer (whether directly or indirectly).
- 7.2 The Customer acknowledges that when processing such data the Company will be acting as a Data Processor on behalf of the Customer (who is the Data Controller) and accordingly the Company shall:
- only process such data in accordance with instructions received from the Customer regarding the Services to be provided under the Contract, or as otherwise required by law; and
 - implement appropriate technical and organisational measures to protect such data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure.
- 7.3 The Customer warrants that it has obtained all necessary consents and complied with all applicable legal requirements (whether under privacy, confidentiality or data protection laws or otherwise) with respect to the processing of data by the Company under the Contract and that it has and shall comply with all applicable laws and regulations as appropriate to enable the lawful receipt of the Services by the Customer in accordance with the Contract (including all Data Protection Legislation).
- 7.4 The Customer hereby warrants that it shall not use any data provided by the Company via the Services in such a way as to contravene the Data Protection Act 1998 and that it will not, through any act or omission do anything which puts the Company in breach of the Data Protection Act 1998.
- 7.5 The Customer warrants that it is and will remain compliant with the requirements of the DBS and shall take no action nor make or allow any omissions that put the Company in breach of any DBS requirement.
- 7.6 The Customer warrants that it will provide and adhere to the correct definition attributed by the DBS to it and/or attributed to any individual whose details are to be checked as part of the Services, by way of example and without limitation, "Volunteer".
- 7.7 The rights provided hereunder are granted to the Customer only, and shall not be considered granted, if relevant, to any subsidiary or holding company of the Customer.
- 7.8 The Customer acknowledges that, in order to enjoy the benefit of the Services, it may be necessary to grant a licence to any data (provided by or related to the Customer) to third parties including, without limitation, the DBS.
- 7.9 The Customer shall familiarise itself with the Company's policy for the secure Storage, Handling, Use, Retention & Disposal of Disclosure and Disclosure Information (the "**Security Policy**") which may be viewed at <http://www.personnelchecks.co.uk/media/136702/policy-statement-on-secure-storage-handling-use-retention-and-disposal-of-disclosures-and-disclosure-information.pdf> and shall:
- put in place a security policy which is substantially similar to and at least as onerous as the Security Policy; and
 - ensure that said security policy is maintained and adhered to throughout the Term; and
 - ensure that each Authorised User understands and abides by the security policy.
- 7.10 Each party agrees and undertakes that it will hold in complete confidence any Confidential Information disclosed to it (whether directly or indirectly and by whatever means), and will not disclose it in whole or in part at any time to any third party, nor use any Confidential Information for any purpose other than the performance of its obligations under the Contract. The obligations set out in this clause 7.5 shall not apply to any Confidential Information which:
- at or prior to the time of disclosure was known to the receiving party (as evidenced in writing), except to the extent that such Confidential Information was unlawfully appropriated (if any);
 - is required to be disclosed by law, court order or the request of any government or regulatory authority.
- 7.11 Subject to these Conditions, the Company shall be entitled to disclose to any third party that the Company is providing the Services to the Customer and shall be entitled to identify the Customer in the Company's marketing and publicity activities.
- 8. INTELLECTUAL PROPERTY AND LICENCE**
- 8.1 All right, title and interest in and to any Intellectual Property Rights which exist in or are used in relation to the System or which exist in the Services or are developed in the performance of the Services shall vest in and shall remain vested in the Company or its licensors.
- 8.2 The Company hereby grants to the Customer a limited, personal, non-exclusive, non-transferable licence to use the Intellectual Property Rights referred to in clause 8.1 to the extent necessary to enable the Customer to make use of the System and the Services in accordance with these Conditions.
- 9. WARRANTIES AND INDEMNITIES**
- 9.1 The Customer hereby warrants and undertakes that it (and each Authorised User, where applicable):
- has all requisite power and authority to enter into and perform the terms of the Contract;
 - shall comply with these Conditions and the Code of Practice;
 - shall promptly notify the Company of any complaint against it in respect of any alleged breach of the Code of Practice and any investigation into its affairs by the DBS.
- 9.2 The Company warrants that:
- it has all requisite power and authority to enter into and perform the terms of the Contract;
 - the Services shall be performed in accordance with the requirements of clause 3.1.
- 9.3 The Company does not warrant that the performance or operation of the Services will be uninterrupted or error free or that the Services will meet the Customer's specific requirements.
- 9.4 Except as set out in these Conditions, all express or implied representations, warranties or conditions, including any implied warranty of satisfactory quality, fitness for a particular purpose or non-infringement, are hereby excluded to the fullest extent permitted by law.
- 10. LIMITATION OF LIABILITY AND INDEMNITY**
- 10.1 Subject always to any additional limitation of the Company's liability elsewhere in these Conditions, this clause 10 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- any breach of the Contract;
 - the supply of the Services and any use made by the Customer of the Services or any part of them; and
 - any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 The Company shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any information or from any instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or arising from any other fault of the Customer.
- 10.3 With respect to the Company's liability hereunder, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 Nothing in these Conditions limits or excludes the liability of the Company:
- for death or personal injury resulting from its own negligence; or
 - for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
 - for any liability incurred by the Customer as a result of any breach by the Company of the conditions implied by section 2 of the Supply of Goods and Services Act 1982.
- 10.5 Subject to clause 10.3 and clause 10.4:
- the Company shall not be liable for:
 - loss of profits; or
 - loss of business; or
 - depletion of goodwill and/or similar losses; or
 - loss of anticipated savings; or
 - loss of goods; or
 - loss of contract; or

- vii. loss of use; or
 - viii. loss or corruption of data or information; or
 - ix. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the amount of the Contract Charges paid by the Customer in the 6 month period immediately preceding the claim or claims in respect of which liability is alleged and no individual liability shall attach to any claim.
- 10.6 Without limiting the generality of this clause 10:
- (a) any recruitment decision or responsibility related to any Applicant shall rest solely with the Customer and the Company shall have no liability for any claim made by an Applicant on the basis that the Customer has acted unfairly or otherwise adversely in respect of any Applicant;
 - (b) the Company shall not be held liable for any errors, inaccuracies or omissions made by the Applicant or the Customer.
- 10.7 The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 11. TERM AND TERMINATION**
- 11.1 The Contract shall commence on the Commencement Date and shall continue for the Minimum Term unless and until terminated by either party on 90 days' written notice to the other party (with termination by the Customer to take effect on the Second Anniversary Date). If the Contract is not terminated prior to the expiry of the Minimum Term pursuant to this clause 11.1, the Contract shall automatically continue for successive Renewal Terms, unless and until terminated by either party on 30 days' written notice to the other party (with termination by the Customer to take effect on the last day of the then-current Renewal Term). Notwithstanding the provisions of this clause 11.1, the Contract shall be subject to earlier termination by the Company under clause 6.3 or clause 11.2, or by either party under clause 11.3.
- 11.2 The Company may terminate the Contract immediately upon written notice to the Customer, if:
- (a) the Customer is in breach of these Conditions or the Code of Practice, or the Company reasonably determines that the acts or omissions of the Customer could lead to the Company being found in breach of the Code of Practice;
 - (b) a fine is levied or a complaint upheld against the Customer by the DBS;
 - (c) the Company reasonably believes that the Customer is acting unlawfully or inappropriately in using the Services or the System, or that the Services or the System are being used in an unlawful or inappropriate manner; or
 - (d) the Company ceases to be an Umbrella Body.
- 11.3 Either party may terminate the Contract immediately upon written notice to the other if:
- (a) the other party commits any material breach of any of these Conditions and in the case of such a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied (for the avoidance of doubt any late payment or failure to pay by the Customer any sums due shall be deemed a material breach); or
 - (b) an incumbrancer takes possession or a receiver is appointed over any of the property or assets of the other party; or
 - (c) the other party makes a voluntary arrangement with its creditors or becomes the subject of an administration order; or
 - (d) the other party has a bankruptcy order made against it or becomes subject to an event of insolvency, or goes into liquidation (except for the purposes of amalgamation, reconstruction or other reorganisation); or
 - (e) the other party ceases or threatens to cease to carry on its business.
- 11.4 Termination of the Contract shall be without prejudice to the accrued rights and obligations of either party at the date of termination, and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.
- 11.5 Upon termination of the Contract the Customer shall:
- (a) not be entitled to any reimbursement of any part of the Contract Charges (unless the Company has effected termination pursuant to clause 6.3);
 - (b) pay any outstanding amounts due to the Company within 7 days;
 - (c) destroy (or return to the Company if requested) copies of all manuals, instructions and data relating to the Services and any Confidential Information; and
 - (d) immediately cease to use the System.
- 12. CHANGES IN DBS PROCEDURES**
- 12.1 The Company shall not be liable to the Customer for any delay in performance or failure to perform its obligations in accordance with the Contract where such delay or failure is due to a change in the Code of Practice, or a change in the procedures relating to the processing of Disclosure Applications by the DBS ("**DBS Procedure Change**").
- 12.2 If a DBS Procedure Change takes place the Company shall use all reasonable endeavours to minimise any adverse impact on the performance of the Services and will notify the Customer of any such impact. The Company reserves the right to vary the Contract Charges by a fair and equitable amount as necessary to reflect any changes to the Services which may be required following a DBS Procedure Change.
- 13. AUDIT**
- From time to time the DBS carries out assurance audits of Registered Bodies. The Customer agrees to provide reasonable assistance and access to such records and other data or information as may be requested by DBS and/or the Company in event of an audit being carried out in connection with the Services.
- 14. FORCE MAJEURE**
- The Company shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, Act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of any suppliers or subcontractors.
- 15. CHANGES**
- Notwithstanding the provisions of clause 2.6 (which shall not apply to this clause 15), the Company reserves the right without prior approval from or notice to the Customer to make any changes to the Services which are required to conform to any applicable statutory or regulatory requirements.
- 16. GENERAL**
- 16.1 No forbearance or indulgence granted by the Company to the Customer shall in any way limit the rights of the Company under these Conditions.
- 16.2 The Customer may not assign or transfer or purport to assign or transfer any right or obligation of the Customer under the Contract without the prior written consent of the Company. The Company reserves the right to assign any or all of its rights or obligations under the Contract to any third party as part of a bona fide merger, reorganisation or sale of its business, or otherwise.
- 16.3 Nothing in the Contract shall be construed as creating a partnership, joint venture or agency relationship between the parties or give either party the power to bind the other.
- 16.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.
- 16.5 Neither the Company nor the Customer intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right and no

waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

- 16.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 16.8 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 16.9 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties. The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.
- 16.10 Telephone calls to and from the company may be monitored and recorded for training and quality purposes. Such recordings will be stored in compliance with confidentiality and data protection legislation.
- 16.11 The Contract shall be subject to and construed under English Law and the parties hereby submit to the exclusive jurisdiction of the English courts for that purpose.