

These terms and conditions form a legal agreement ("**Agreement**") between

- (1) You (the "**Customer**"); and
- (2) Care Check Ltd incorporated and registered in England and Wales with company number 08076261 whose registered office is at Orchard House, Crab Apple Way, Evesham, Worcestershire, United Kingdom, WR11 1GE (the "**Supplier**").

## **BACKGROUND**

- (A) The Supplier has developed and licenced certain software applications and platforms which it utilises to provide the services to the Customer.
- (B) The Supplier provides the services via the internet on a pay-per-use basis for the purpose of enabling the Customer to make DBS Checks, ID Checks, Right to Work Checks, Social Media Checks or such other services as are specifically agreed by the parties.
- (C) The Customer wishes to use the Supplier's services for the purpose of its trade, business, employment or profession.
- (D) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's services subject to the terms and conditions of this Agreement.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**"Access NI"**: means Access NI, a branch of the Department of Justice for Northern Ireland.

**"Additional Information"**: means any additional information relating to the Applicant being checked which is held by local police forces and provided as part of an enhanced DBS Check.

**"Applicant"**: means the individual who provides their details to the Supplier (whether via the Customer, or directly into the Software independently or at the direction of the Customer) in connection with an Application.

**"Applicant Data"**: any information provided by the Applicant, including any personal data, in connection with an Application.

**"Application"**: means an application to carry out an online vetting and screening check in relation to the Applicant.

**"Approval"**: means when the Supplier has reviewed any Applicant Data or Customer Data in conjunction with the Application and approves the Application in readiness for submission to the relevant third party.

<b>"Authorised Users":</b>	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.
<b>"Business Day":</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>"Connectivity":</b>	means an end-to-end connection between: <ul style="list-style-type: none"> <li>(1) the Customer's equipment which is used to access the Software; or</li> <li>(2) an end-to-end connection between the Customer's servers and the Software</li> </ul>
<b>"Code":</b>	means the Revised Code of Practice for Disclosure and Barring Service Registered Persons dated November 2015, the DS Code of Practice in connection with the use of disclosure information and with the functions of registered persons dated 6 June 2022 or the Access NI Code of Practice For Registered Persons and other recipients of Disclosure Information dated October 2020, in each case as applicable and as amended from time to time.
<b>"Confidential Information":</b>	means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.1.
<b>"Customer Data":</b>	the data inputted by the Customer, Authorised Users, Applicants or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
<b>"Designated Individual":</b>	has the meaning given in clause 6.1.2.
<b>"DBS":</b>	means the Disclosure and Barring Service, a UK government executive, non-departmental public body sponsored by the UK Home Office.
<b>"DBS Checks"</b>	means criminal record checks carried out through DBS, DS and Access NI.
<b>"DS":</b>	means Disclosure Scotland, an executive agency of the Scottish Government.
<b>"Documentation":</b>	the documents made available to the Customer by the Supplier online via <a href="https://www.carecheck.co.uk/">https://www.carecheck.co.uk/</a> or such other web address notified by the Supplier to the Customer from time to time which sets out a scope of the Services and the user instructions for the Services.

<b>"Effective Date":</b>	the date the Customer registers to access the Services.
<b>"Fees":</b>	the fees payable by the Customer to the Supplier for the Services, as set out in clause 7 and Schedule 1.
<b>"ID Check"</b>	means the verification of an Applicants identity.
<b>"Identity Documentation":</b>	means the original passport and/or other original identification documents of the Applicant and any personal information within these documents.
<b>"Nominated Individual":</b>	has the meaning given in clause 6.1.3.
<b>"Normal Business Hours":</b>	9.00 am to 5.00 pm local UK time, each Business Day.
<b>"Permitted Purpose":</b>	means the submission of checks as set out in the Services either by an Applicant or by the Customer as part of pre-employment vetting and screening and in accordance with the Code.
<b>"Results":</b>	means the results of the relevant checks conducted pursuant to the Services which is made available to the Customer, Authorised User or the Applicant.
<b>"Right to Work Check":</b>	means the verification that an Applicant is eligible to work in the UK.
<b>"Secure HTTP":</b>	means a secure version of the hypertext transfer protocol which operates by default on the TCP port 443.
<b>"Services":</b>	the services provided by or on behalf of the Supplier to the Customer under this Agreement using the Software, including: DBS Checks, Right to Work Checks, Social Media Checks and ID Checks, and together with any other services which the Supplier may offer to the Customer from time to time.
<b>"Social Media Checks":</b>	means the checks on a Subject's activity on social media platforms as set out <a href="https://www.carecheck.co.uk/social-media-checks/">https://www.carecheck.co.uk/social-media-checks/</a> .
<b>"Software":</b>	the online software applications provided by the Supplier as part of the Services.
<b>"Statement of Fair Processing":</b>	The fair processing policy of the Supplier as made available at <a href="https://www.carecheck.co.uk/about/policies/">https://www.carecheck.co.uk/about/policies/</a>
<b>"Subject"</b>	means the person in respect of whom a Social Media Check is being performed.

<b>“SP Index”:</b>	means Social Media Consulting Limited, a company incorporated in England and Wales with company number 07358739 whose registered office is 1 Doolittle Yard, Froghall Road, Ampthill, Bedfordshire, MK45 2NW.
<b>“TrustID”:</b>	means TrustID Limited, a company incorporated in England and Wales with company number 05953015 whose registered office is The Blade, Abbey Street, Reading, England, RG1 3BA.
<b>“TrustID Portal”:</b>	the software platform made available to the Customer or Applicant by TrustID.
<b>“TrustID Services”:</b>	means the ID Check and Right to Work Check services provided through the Trust ID Portal.
<b>"Virus":</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
<b>“Volunteer Application”:</b>	means an Application made by or on behalf of a volunteer Applicant in which the DBS Fees are waived by the DBS, DS or Access NI.
<b>"Vulnerability":</b>	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term <b>"Vulnerabilities"</b> shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes fax and email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## **2. USE OF THE SERVICES**

- 2.1 In consideration of the Customer paying the Fees, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Customer, its Authorised Users and the Applicants to use the Services and the Results in accordance with this Agreement.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- 2.2.1 the devices used by the Authorised Users in accessing the Software or Results have adequate and appropriate safety, Virus and Vulnerability protections in place, and that devices:
    - (a) are capable of running a current version of a compatible browser as notified to the Customer from time to time;
    - (b) are able to access the Software using Secure HTTP; and
    - (c) uses appropriate Connectivity;
  - 2.2.2 it will not allow or suffer any login details to the Software to be used by more than one individual Authorised User or shared with any third party and shall ensure that reasonable care is taken to enter the login details in a private location;
  - 2.2.3 each Authorised User shall keep a secure password for their use of the Services and each Authorised User shall keep their password confidential;
  - 2.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
  - 2.2.5 it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than

once per quarter, at the Supplier'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

2.2.6 if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.3.2 facilitates illegal activity;

2.3.3 depicts sexually explicit images;

2.3.4 promotes unlawful violence;

2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

2.3.6 is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

(a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or

2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

- 2.4.3 use the Services and/or Documentation to provide services to third parties; or
  - 2.4.4 subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - 2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
  - 2.4.6 and shall procure that the Applicant and Authorised Users shall not, introduce or permit the introduction of, any Virus or Vulnerability into the Software, Services or the Supplier's network and information systems.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3. SCOPE OF SERVICES**

- 3.1 The Supplier shall, during the Term, provide the Services to the Customer for use by the Authorised Users and Applicants in accordance with this Agreement.
- 3.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 3.2.1 planned maintenance carried out during the maintenance window of:
    - (a) 12.00 am to 1.00 am Monday to Friday; and
    - (b) 8.00 am to 5.00 pm Saturday to Sunday;
  - 3.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 48 hours notice in advance.
- 3.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours
- 3.4 The Supplier may change any part of the Services by notice in writing to the Customer provided that such changes do not have an adverse affect on the Services. The Supplier many change any part of the Service by notice in

writing to the Customer which do have an adverse affect on the Services for the purpose of:

- 3.4.1 complying with Applicable Laws;
- 3.4.2 complying with any regulatory or other requirements of DBS, DS, TrustID, Access NI, SP Index or any other third party supplier;
- 3.4.3 maintaining the performance, availability and/or security of the Services and the Software.

#### **4. THIRD PARTY PROVIDERS**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

#### **5. SUPPLIER'S OBLIGATIONS**

- 5.1 The Supplier shall perform the Services substantially in accordance with the Documentation and with reasonable skill and care.
- 5.2 The Supplier's obligations at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.
- 5.3 If the Services do not conform with the terms of clause 7.1, Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1.
- 5.4 The Supplier:
  - 5.4.1 does not warrant that:
    - (a) the Customer's use of the Services will be uninterrupted or error-free;
    - (b) that the Services, Results and/or the information obtained by the Customer through the Services will be accurate or meet the Customer's requirements; or



- (c) the Software or the Services will be free from Vulnerabilities or Viruses;
- 5.4.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
- 5.4.3 is not responsible for any delays, delivery failures, or any other loss or damage, including any errors, mistakes or omissions, by TrustID, SP Index or any other third party in providing the Services; and
- 5.4.4 is not responsible for any errors, mistakes or omissions of the Customer or Applicant in providing the Customer Data or Applicant Data.
- 5.5 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 5.6 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 5.7 The Supplier shall upon request provide to the Customer a copy of the Code.

## 6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall provide the Supplier with:
  - 6.1.1 all necessary co-operation in relation to this Agreement;
  - 6.1.2 the contact details of a designated individual who will act as the point of contact during the provision of the Services ("**Designated Individual**") and where the appointment of a Designated Individual is changed, the Customer shall inform the Supplier in writing of this change;
  - 6.1.3 the details each employee of the Customer appointed by the Customer to verify the Identity Documentation provided by the Applicant in accordance with the Code and any applicable laws or DBS, DS and Access NI guidelines ("**Nominated Individual**"), and where the appointment of a Nominated Individual is changed, the Customer shall inform the Supplier in writing of this change; and
  - 6.1.4 all necessary access to such information as may be required by the Supplier;

in order to provide the Services.

- 6.2 The Customer warrants that:
- 6.2.1 the Customer Data and Applicant Data provided by the Customer is true and accurate and has sufficient quality and completeness so as to enable the Supplier to provide the Services; and
  - 6.2.2 that the Customer and Applicant are fully and lawfully entitled to transfer Identity Documentation information, Applicant Data and Customer Data for the purposes of the Services; and
  - 6.2.3 the Customer has consent from the Applicant to any DBS Checks, ID Checks, Right to Work Checks, and Social Media Checks being carried out in respect of them.
- 6.3 The Customer acknowledges that:
- 6.3.1 where the Customer fails to comply with clause 6.2, the Supplier reserves the right to reject the request for the Services without compensation or commercial consequence;
  - 6.3.2 the Supplier has no control over the length of time taken for a Result from a DBS Check, ID Check, Right to Work Check or Social Media Check to be returned by the relevant third party provider or the contents of that Result;
  - 6.3.3 the information provided by the Supplier is for guidance only and should not be considered as a substitute for receiving professional or legal advice;
  - 6.3.4 that any third party suppliers own and retain all proprietary right, title and interest in their products, software and any technical documentation or other materials relating to their products including without limitation any and all copyrights, patents, trademarks, tradenames and other intellectual property rights embodied in or used in connection with their product documentation and materials and including without limitation any modifications, enhancements, translations, localisations or other derivative works thereof made by the third party's suppliers;
  - 6.3.5 the Customer, Applicant and Authorised User will not use all or any of the Software, Services or Results suppliers to train or test directly or indirectly or either by itself or through a third party any machine learning or artificial intelligence technology or process;
  - 6.3.6 subject to any contracted exceptions the Customer may only use the TrustID Services in relation to its own employees, prospective employees, customers, and will not sell or transfer any Results to any other third party except for regulators who have made a lawful request to obtain results; and

- 6.3.7 that the third party suppliers may use non personally identifiable data from the Application or the Results for its own internal purposes.
- 6.4 The Customer remains liable for:
  - 6.4.1 the selection of the Services and the extent of the Services and acknowledges that the Services have not been developed to meet the individual requirements of the Customer; and
  - 6.4.2 Service failures which arise as a result of any third party equipment, software or hardware owned or licenced by the Customer;
- 6.5 The Customer shall procure that the Applicant and Authorised Users:
  - 6.5.1 are suitably and adequately trained and use the Services, the Documentation and the Results in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's or Applicant's breach of this Agreement.; and
  - 6.5.2 and if required by the Supplier provide evidence, that the Applicant and Authorised User has acknowledged that where applicable in respect of the receipt of the TrustID Services it will be bound by the customer obligations in the Lexisnexis risk solutions customer licence terms (available at <https://www.trustid.co.uk/lnrscustomer-licence-terms/>);
- 6.6 The Customer shall:
  - 6.6.1 notify the Supplier as soon as it becomes aware of any unauthorised use of the Services by any person;
  - 6.6.2 notify the Supplier in writing when an Authorised User ceases to be an Authorised User;
  - 6.6.3 notify the Supplier immediately where the Designated Individual or Nominated Individual has left their employment with the Customer;
  - 6.6.4 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
  - 6.6.5 ensure that the Applicant and Authorised Users use the Services, the Documentation and the Results in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
  - 6.6.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

- 6.6.7 have a written policy on the secure storage, handling, retention and disposal of any Applicant Data or Customer Data which shall include, but shall not be limited to, the following:
    - (a) that the Results shall not be transferred to any party who is not a party to the contract between the Customer and the Supplier;
    - (b) that the Results of DBS Checks are printed once for the purpose of an audit and are stored or disposed of in accordance with the Code;
    - (c) that the retention of Applicant Data or Customer Data shall be for no more than six months after the relevant recruitment decision has been made; and
    - (d) that all DBS certificates shall be retained and destroyed in accordance with the Code, save to the extent that the Customer is lawfully permitted to retain the information for a longer period;
  - 6.6.8 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
  - 6.6.9 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 6.7 In respect of DBS Checks, the Customer shall:
- 6.7.1 comply with the Code, and shall ensure Applicants and Authorised Users are aware of and comply with the Code;
  - 6.7.2 only use the Services for the Permitted Purpose;
  - 6.7.3 maintain a written policy on the secure handling of information provided by the DBS/DS/Access NI; and
  - 6.7.4 comply with all regulatory guidance, recommendations from official government organisations, applicable laws and regulations with respect to its activities under this Agreement (without affecting its other obligations under this Agreement).
  - 6.7.5 provide the Applicants and Authorised Users with:
    - (a) the Statement of Fair Processing, upon request;

- (b) a satisfactory written policy maintained by the Customer on the suitability of ex-offenders for employment in relevant positions at the start of the recruitment process; and
- (c) the Code, upon request.

6.7.6 provide a written statement on:

- (a) the application forms given to the Applicant; and
- (b) employment advertisements

that an Applicant will need to complete an Application for a DBS Check where the Applicant is offered employment;

6.7.7 provide a written statement on the application forms given to the Applicant that a criminal record will not be a bar to obtaining employment;

6.7.8 treat Additional Information as sensitive information which is not to be divulged to any Applicant, it being acknowledged by the Customer that to do so would be a criminal offence; and

6.7.9 discuss the Results with the Applicant prior to withdrawing an offer of employment.

6.8 In relation to Social Media Checks, the Customer:

6.8.1 agrees to provide the information reasonably requested by the Supplier to carry out a Social Media Check and acknowledges that when a greater quality of information is provided to the Supplier, the Supplier will be able to provide a more in-depth result. The Customer authorises the Supplier and its sub-contractors to carry out Social Media checks searching the internet using any tools available.

6.8.2 warrants that:

- (a) they have the necessary rights and permissions to distribute the information they provide to the Supplier in respect of a Social Media Check including any information relating to the Subject; and
- (b) that they have given proper notice to the Subject about how they are processing the Subject's personal data.

6.8.3 acknowledges that:

- (a) the Results of the Social Media Checks will deliver content over which the Supplier has no control and may be subject to interference by third parties; and
- (b) the Supplier gives no warranty as to the accuracy of the Results in respect of the Social Media Checks.

- (c) the Supplier expressly advises that neither the Customer nor any other party should use the Reports from the Social media Checks as a sole basis for any decision whether regulatory, business or otherwise and the Supplier shall not be liable for any losses suffered as a result of the Customer making any decision based on the Results.
- 6.9 In relation to Right to Work Checks, the Customer acknowledges that it shall be solely responsible for complying with applicable laws in respect of such checks and the Right to Work Checks do not relieve the Customer of their statutory obligations in respect of ensuring an Applicant is eligible to work in the UK.
- 6.10 The Customer shall own all right, title and interest in and to all of the Customer Data and Applicant Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data and Applicant Data.
- 6.11 The Supplier has the right to visit the Customer at their registered office or place of business to ensure that the Customer is complying with this Agreement and the Code.

## **7. CHARGES AND PAYMENT**

- 7.1 The Customer shall pay the Fees to the Supplier for the Services in accordance with this clause 7 and Schedule 1.
- 7.2 On receipt of the Application for a DBS Check, the Supplier shall:
  - 7.2.1 provide Approval of the Application or notify the Customer that their Application has been queried; and
  - 7.2.2 where Approval is granted, the applicable Fees become payable for the Services and shall be invoiced to the Customer.
- 7.3 On receipt of the Application for an ID Check, Right to Work Check or Social Media Check, the applicable Fees become payable for the Services and shall be invoiced to the Customer .
- 7.4 The Customer shall pay each invoice submitted by the Supplier:
  - 7.4.1 by debit or credit card at the time of submission of the Application; or
  - 7.4.2 where agreed with the Supplier, within 15 days from the date of receiving the invoice or in accordance with other payment terms agreed with Supplier; and
  - 7.4.3 in full and cleared funds to the bank account nominated in writing by the Supplier.
- 7.5 Unless payment terms have been agreed in accordance with clause 7.4.2, the Supplier shall not submit the Application to the relevant third party unless payment has been made in accordance with clause 7.4.1.

- 7.6 If the Supplier has not received payment within 10 days after the due date, and without prejudice to any other rights and remedies of the Supplier, interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.7 The Customer agrees to pay all Fees due in respect of Services ordered by any party who has accessed the Services using the Customer or any Authorised User's log-in details.
- 7.8 Where a Customer submits a Volunteer Application and the volunteer status of the Applicant is incorrect, the Customer shall pay the applicable DBS Fee to the Supplier within 10 business days of written notification from the Supplier.
- 7.9 The Supplier shall not be liable to refund any Fees:
- 7.9.1 if an Application is cancelled after the Application is submitted to the relevant third party; or
  - 7.9.2 if DBS, DS or Access NI withdraw an Application.
- 7.10 All amounts and fees stated or referred to in this Agreement:
- 7.10.1 shall be payable in pounds sterling;
  - 7.10.2 are non-cancellable and non-refundable;
  - 7.10.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate, save in respect of the DBS application fee which is a VAT exempt disbursement.
- 7.11 The Supplier shall be entitled to increase the Fees upon giving 30 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.
- 7.12 The Supplier may at any time, without notice to the Customer, set off any liability of Customer to the Supplier against any liability of the Supplier to Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Supplier of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 7.13 The Customer agrees to pay to the Supplier any costs, fees, expenses or disbursements that arise as a consequence of their failure to comply with this agreement.

## **8. PROPRIETARY RIGHTS**

- 8.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not

grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

8.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

8.3 The Customer and Supplier agree and acknowledge that the Applicant owns the Results of a DBS Check.

## 9. CONFIDENTIALITY AND COMPLIANCE WITH POLICIES

9.1 "**Confidential Information**" means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the Services, including but not limited to:

9.1.1 any information that would be regarded as confidential by a reasonable business person relating to:

- (a) the business, assets, affairs, customers, clients, suppliers of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
- (b) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

9.1.2 any information developed by the parties in the course of carrying out this Agreement and the parties agree that:

- (a) details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
- (b) Customer Data shall constitute Customer Confidential Information.

**Representatives** means, in relation to a party, its employees, officers, contractors, subcontractors and advisers.

9.2 The provisions of this clause shall not apply to any Confidential Information that:

9.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

9.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;



- 9.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
  - 9.2.4 the parties agree in writing is not confidential or may be disclosed.
- 9.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
  - 9.3.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement ("**Permitted Reason**"); or
  - 9.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.
- 9.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Reason, provided that:
  - 9.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - 9.4.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 9.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 9.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 9.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this Agreement.
- 9.8 On termination or expiry of this Agreement, each party shall:
  - 9.8.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting,

incorporating or based on the other party's Confidential Information;

9.8.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

9.8.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 12 (Termination).

9.9 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

9.10 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

9.11 The above provisions of this clause 9 shall continue to apply after termination or expiry of this Agreement.

## **10. INDEMNITY**

10.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:

10.1.1 any breach of any term or conditions of this Agreement by the Customer, its Authorised Users or the Applicant;

10.1.2 any fraudulent or malicious use of the Services;

10.1.3 any breach of applicable laws;

10.1.4 any fraudulent or malicious representations made by the Customer, Applicant or Authorised User to the Supplier in respect of the validity of any consent given or any other information provided;

10.1.5 the Customer knowingly or negligently providing false Customer Data or Applicant Data;

- 10.1.6 the Supplier's use of the information provided by the Customer in relation to a Social Media Check, including without limitation any claims, actions, proceedings, losses or damages arising out of breach of data protection laws or infringement of intellectual property rights; and
  - 10.1.7 the Customer's or its Authorised User's or Applicant's use of the Services, Results and/or Documentation.
- 10.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
  - 10.2.1 the Supplier is given prompt notice of any such claim;
  - 10.2.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - 10.2.3 the Supplier is given sole authority to defend or settle the claim.
- 10.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
  - 10.4.1 a modification of the Services or Documentation by anyone other than the Supplier; or
  - 10.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
  - 10.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
  - 10.4.4 the Customer's breach of this Agreement.
- 10.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 11. LIMITATION OF LIABILITY

- 11.1 Except as expressly and specifically provided in this Agreement:
- 11.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services, the Documentation and Results by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any Customer Data, Applicant Data, information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
  - 11.1.2 the Supplier shall have no liability for any damage caused by errors or omissions in the Results provided by DBS, DS, Trust ID Portal, SP Index or any third party;
  - 11.1.3 the Supplier shall have no liability for any loss or damage arising from any interruption or cessation of Services;
  - 11.1.4 all dates and times supplied by the Supplier for the provision of the Services are an estimate and may be subject to reasonable delay;
  - 11.1.5 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
  - 11.1.6 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 11.2 Nothing in this Agreement excludes the liability of the Supplier:
- 11.2.1 for death or personal injury caused by the Supplier's negligence; or
  - 11.2.2 for fraud or fraudulent misrepresentation.
- 11.3 Subject to clause 11.1 and clause 11.2:
- 11.3.1 the Supplier shall have no liability for any:
    - (a) loss of profits,
    - (b) loss of business,
    - (c) wasted expenditure,
    - (d) depletion of goodwill and/or similar losses,
    - (e) loss or corruption of data or information, or
    - (f) any special, indirect or consequential loss, costs, damages, charges or expenses..

- 11.3.2 the Supplier's total aggregate liability to the Customer (including in respect of the indemnity at clause 10.2), in respect of all breaches of duty occurring within any contract year shall not exceed the cap.
- 11.3.3 In clause 11.3.2:
- (a) the cap is the greater of (i) £5,000 and (ii) the sum of one hundred per cent (100%) of the Administration Fees and 30% of the Fees for ID Checks, Right to Work Checks and Social Media Checks paid in the contract year in which the breaches occurred;
  - (b) a contract year means a 12 month period commencing on the Effective Date or any anniversary of it.
- 11.4 References to liability in this clause 11 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.5 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

## **12. TERM AND TERMINATION**

- 12.1 This Agreement shall commence on the Effective Date and shall continue unless terminated in accordance with this clause 12 ("**Term**") until either party gives to the other party one month's written notice to terminate.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 12.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 12.2.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
  - 12.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the

IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 12.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 12.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 12.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 12.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 12.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 12.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 12.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 12.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2.3 to *clause 14.2(j)* (inclusive);
- 12.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 12.2.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

12.3 On termination of this Agreement for any reason:

- 12.3.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- 12.3.2 each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- 12.3.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- 12.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**13. FORCE MAJEURE**

The Supplier shall not be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.

**14. CONFLICT**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

**15. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**16. WAIVER**

- 16.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **17. RIGHTS AND REMEDIES**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **18. SEVERANCE**

18.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

18.2 If any provision or part-provision of this Agreement is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **19. ENTIRE AGREEMENT**

19.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

19.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **20. ASSIGNMENT**

20.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

20.2 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that it gives prior written notice of such dealing to the Customer.

## **21. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither



party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **22. THIRD PARTY RIGHTS**

22.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

22.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

## **23. COUNTERPARTS**

23.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

23.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the others with the "wet ink" hard copy originals of their counterpart.

23.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

## **24. NOTICES**

24.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

24.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business; or

24.1.2 sent by email to such email address as has been notified by each party for such purposes.

24.2 Any notice shall be deemed to have been received:

24.2.1 if delivered by hand, at the time the notice is left at the proper address;

24.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

24.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**25. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

**26. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**THIS AGREEMENT** has been entered into on the date stated at the beginning of it.

## Schedule 1

### Fees

#### 1. DBS CHECK FEES

1.1 The Fees for DBS checks consist of a fixed DBS fee (“**Fixed Fee**”) and a variable administration fee (“**Administration Fee**”) in accordance with the following table:

Number of checks/ Type of check		Enhanced DBS check	Standard DBS Check	Basic DBS check	DS check	Volunteer DBS check	Adult 1st
<b>Fixed Fee – VAT Exempt</b>		£38.00	£18.00	£18.00	£25.00	-	£6.00
<b>Administration Fee (Inclusive of VAT)</b>	<b>1-100</b>	£12.00	£12.00	£12.00	£12.00	£12.00	£4.80
	<b>101-200</b>	£9.60	£9.60	£9.60	£9.60	£9.60	£4.80
	<b>201-500</b>	£7.20	£7.20	£7.20	£7.20	£7.20	£4.80
	<b>500+</b>	£6.00	£6.00	£6.00	£6.00	£6.00	£4.80

## 2. OTHER SERVICES FEES

2.1 Additional Services may be purchased by the Customer and are charged in accordance with the following table:

<b>Check type</b>	<b>Standard Fee</b>
Right to Work Check	£3.85
Social Media Check	From £36.00
External ID Check	£12.00
DBS digital identity validation	£3.85
Combined DBS digital identity validation and right to work check	£6.00