

## Due Diligence Checking Limited – Terms and Conditions for the Supply of Services

### 1. BASIS OF CONTRACT

- 1.1 Each request from you (**Order**) for Disclosure or Identity Verification services (**Services**) constitutes an offer by you to purchase Services in accordance with these terms and conditions (**Conditions**).
- 1.2 The Order shall only be deemed to be accepted when we start to deliver the Services (which in the case of Disclosure Services, shall be when we attempt to contact the Applicant) at which point and on which date a contract between us for the supply of Services in accordance with these Conditions (**Contract**) shall come into existence.
- 1.3 The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in the Contract.
- 1.4 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 Where you authorise an Applicant to contact us directly to request Services you acknowledge and agree that such Applicant acts as your agent and you shall be bound by the Order placed by him.

### 2. SUPPLY OF SERVICES

- 2.1 Our Disclosure service involves the application to the Disclosure and Barring Service (**DBS**) or Disclosure Scotland on your behalf for a Disclosure in respect of an individual who has consented to such application (**Applicant**).
- 2.2 Our Identity Verification service involves the use of Experian Limited (or any successor supplier that we may appoint at our sole discretion) to confirm the identity of an Applicant to a level of confidence specified by the DBS.
- 2.3 Where we are unable to provide the Services in respect of a particular Applicant we shall notify you accordingly.
- 2.4 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.
- 2.5 We warrant to you that the Services will be provided using reasonable care and skill and in compliance with all relevant English law.

### 3. CLIENT'S OBLIGATIONS

- 3.1 You shall:
  - (a) ensure that the terms of the Order (including all details in respect of the relevant Applicant) are complete and accurate;
  - (b) co-operate with us in all matters relating to the Services, including in respect of any additional obligations we are required to impose upon you in order to comply with any law or the Codes of Conduct of the DBS or Disclosure Scotland (as appropriate and according to the body to which the Disclosure application is made);
  - (c) provide us with such information as we may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects;
  - (d) notify us of any changes in the Applicant's status, personal circumstances or personal information that affect our ability to contact the Applicant or to deliver the Services;
  - (e) ensure you have the prior written consent of any Applicant (using wording prescribed by us from time to time) for us to carry out the Services in respect of him and (where necessary) for us to contact him directly. In respect of Identity Verification Services, the prescribed wording is set out at the Appendix to these terms and conditions;
  - (f) verify the identity of the Applicant to the level of confidence specified by the DBS before making any application to us for Disclosure Services in respect of him;
  - (g) store all passwords and any other login information we provide to you in a secure format and ensure that only competent and suitable persons are authorised to access our online application system;
  - (h) access our online application system for its intended purposes only and not without our prior written consent re-sell the Services or require Applicants or any third parties to pay you for your use of the Services;
  - (i) acknowledge by email or in writing the receipt of Disclosure information provided verbally by our Counter-signatories;
  - (j) adhere to the DBS' guidelines when submitting an application for a free Disclosure in respect of a voluntary position (as defined by the DBS) and in the event that we (in our sole discretion) subsequently deem that such application is for a non-voluntary position pay all Charges and fees payable for a non-voluntary role in addition to any additional costs we incur as result of the incorrect application;
  - (k) have and maintain written policies in respect of the recruitment of ex-offenders and the handling, secure storage and retention of Disclosure information (which you shall make available for our inspection on reasonable notice); and
  - (l) in the use or dissemination of any information contained within a Disclosure, comply with the Code of Practice of the DBS or Disclosure Scotland (as appropriate) or any successor bodies, as set out on their respective websites and as updated from time to time.
- 3.2 You hereby warrant that you are entitled to ask Exempted Questions.

- 3.3 You shall indemnify us and keep us indemnified against any costs, losses and expenses we suffer arising from any breach of clauses 3.1(c),(e),(f),(k) and (l) and 3.2 above.
- 3.4 If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation (**Client Default**):
- (a) we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Client Default, and to rely on the Client Default to relieve us from the performance of any of our obligations to the extent the Client Default prevents or delays our performance of any of our obligations;
  - (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 3.4; and
  - (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Client Default.

#### **4. CHARGES AND PAYMENT**

- 4.1 The charges for the Services (**Charges**) shall be our standard charges as updated from time to time and as set out on our website at [www.ddc.uk.net](http://www.ddc.uk.net) (including on any News pages on our website). The Charges are payable irrespective of the application outcome.
- 4.2 Where additional services are required following the Order (including but not limited to Identity Verification checks or fingerprint processing) we shall charge for the additional services at our standard charges as updated from time to time and as set out on our website.
- 4.3 Any element of the Charges that we collect on behalf of third parties (for example, the DBS) (a **Disbursement**) shall be an estimate only and, in the event that the relevant third party increases its fees before the completion of the Services, we shall be entitled to increase the Charges to take account of such increase. Where such third party waives or refunds any part of their fees, we shall reduce the Charges by the sum waived or refunded. Where you formally withdraw the application before submission by us to the relevant third party, we shall reduce the Charges by the amount of fees that would have been payable to such third party.
- 4.4 Where you are an account customer, we shall invoice you for the full amount of the Charges at the end of the month in which you place the relevant Order. You shall pay each invoice within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by us. Time for payment shall be of the essence of the Contract.
- 4.5 Where you are a customer in respect of which we allow your Applicants to pay us on your behalf (a **Self-Pay Customer**) we shall send a document pack to the relevant Applicant following each Order but we shall not be required to undertake any further work on the Services until the Charges have been paid to us in full. For the avoidance of doubt, the Charges shall become due and owing from you immediately upon your request for us to send the Applicant a document pack.
- 4.6 Where you have authorised us to take payments from a credit/debit card we shall take payment 5 calendar days after the Applicant details are received by us or immediately prior to the application being submitted to the relevant third party, whichever is the sooner.
- 4.7 Where you are neither an account customer nor a Self-Pay customer, you shall pay the Charges before the commencement of the Services.
- 4.8 We shall be entitled to amend your account status and payment method at our sole discretion.
- 4.9 Where you have prepaid for multiple Disclosure and/or Identity Verification checks in advance, you acknowledge and agree that the sum paid is on account of future Orders and any indication of the number of checks that such sum will purchase is an estimate only, based on our charges and the third party fees in force at the time of payment.
- 4.10 Notwithstanding any agreements or arrangements between you and the Applicant in respect of payment of our Charges and irrespective of your status as a Self-Pay Customer, you acknowledge and agree that all Charges shall remain due and owing from you until such time as they have been paid to us (whether by you or by the Applicant).
- 4.11 In the event that you provide inaccurate or incomplete information in respect of an Order for Disclosure services and fail to provide any information or documents requested by us within 56 days of the date of the Order, we shall be entitled to cancel the Order without further liability to you. Any subsequent resubmission by you will incur new Charges.
- 4.12 You shall indemnify us and keep us indemnified against all costs, losses and expenses we incur in respect of uncollected or undeliverable mail sent to you or the Applicant (other than to the extent that such costs arise from our error) and in respect of underpaid postage on items of mail sent to us by you or the Applicant.
- 4.13 In the event that you request any management or account information not directly related to the provision of the Services we shall be entitled to charge an administrative fee. Such fee shall be agreed with you and paid by you before the provision of such information.
- 4.14 All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services. Our VAT registration number is 799 5499 32.

4.15 Without limiting any other right or remedy we may have, if you fail to make any payment due to us under the Contract by the due date for payment (**Due Date**), we shall have the right to charge interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

4.16 You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

## **5. CONFIDENTIALITY**

5.1 A party (**Recipient**) shall keep in strict confidence all technical or commercial know-how, processes or initiatives which are of a confidential nature and have been disclosed to the Recipient by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Recipient may obtain. The Recipient shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Recipient's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Recipient.

5.2 The obligations in clause 5.1 shall not apply to information that is or becomes generally available to the public other than as a result of its disclosure by the Recipient, was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party or information that the Recipient is required to disclose by law or the order of any Court.

5.3 This clause 5 shall survive termination of the Contract.

## **6. STORAGE OF DISCLOSURES AND DATA PROTECTION**

6.1 We shall store securely all Disclosure documents we receive in accordance with relevant legislation and the DBS or Disclosure Scotland Code of Practice (as appropriate and according to the body to which the Disclosure application is made). Once stored, Disclosures will only be accessed by our Counter-signatories to the extent necessary:

- (a) (where permitted by law) to communicate the contents of a Disclosure to a third party or verify the legitimacy of the Applicant's copy of the Disclosure to a third party PROVIDED THAT the Applicant provides prior written consent to such communication, the relevant third party is entitled to ask Exempted Questions of the Applicant and the applicable time period since the date of issue of the Disclosure has not expired;
- (b) to facilitate disposal of the Disclosure; or
- (c) to comply with law or the order of any Court or other body of competent jurisdiction.

6.2 We will use data held in any format relating to you or the Applicant only for internal account management, demographic and internal market planning purposes. We may use extracts of the data for other marketing purposes provided neither you nor the Applicant can be identified from such use. We will not use the Applicant's data for any other purpose and for the avoidance of doubt we will not pass data to any third parties (other than as required by law or the provision of the Services) without the Applicant's consent. We will not copy, sample or file Disclosure information in any form other than the original form provided by the DBS/Disclosure Scotland.

6.3 In relation to any "personal data" "processed" by a party as "data controller" (as such terms are defined by the Data Protection Act 1998 (**DPA 1988**)) in connection with the Contract, that party shall process the personal data in accordance with the DPA 1998 and any other applicable data protection legislation.

6.4 To the extent that one party (**Processor**) processes personal data on behalf of the other (**Controller**), the Processor shall:

- (a) at all times comply with obligations equivalent to the obligations of a Data Controller under the provisions of the Seventh Data Protection Principle in the DPA 1988 and shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. When considering what measure is appropriate, the Processor shall have regard to the state of good practice, technical development and the cost of implementing any measures to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss or destruction, and to the nature of the data to be protected;
- (b) at all times process the personal data solely in accordance with the Controller's written instructions from time to time;
- (c) (at the Controller's request) provide a written description of the technical and organisational methods employed by the Processor for processing personal data;
- (d) ensure the reliability of its personnel by vetting staff appropriately who have access to the personal data; and
- (e) not transfer the personal data outside the European Economic Area without the Controller's prior written consent.

6.5 You acknowledge that we are reliant on you alone for direction as to the extent we are entitled to use and process any personal data supplied by you (in respect of the Applicant or otherwise). Consequently, we shall be entitled to be

indemnified in respect of any losses, costs, expenses or damages in circumstances where a data subject (as defined in the DPA 1988) makes a claim or complaint with regards to our actions to the extent that such actions directly or indirectly result from instructions received from you.

## **7. LIMITATION OF LIABILITY AND INSURANCE**

7.1 Nothing in these Conditions shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; or
- (b) any other liability which cannot lawfully be limited or excluded.

7.2 Subject to clause 7.1:

- (a) we shall under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
- (b) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate Charges (excluding Disbursements) paid by you to us during the previous 12 months;
- (c) you acknowledge and agree that we rely on third parties (including but not limited to the DBS, Disclosure Scotland and Experian Limited) in the provision of the Services and that accordingly, any performance dates agreed by us shall be estimates only and time shall not be of the essence for performance of the Services. We accept no liability whatsoever for any losses arising from the time taken to obtain a Disclosure or complete an Identity Verification check;
- (d) we accept no liability whatsoever for any losses of any nature arising from information contained within a Disclosure becoming known by persons not authorised by the Applicant save where such breach of confidentiality arises solely from our negligence in our role as Umbrella Body or from our wilful breach of the Contract;
- (e) we shall (at your cost) provide reasonable cooperation in the event that you make a claim to a courier company or Royal Mail for compensation for lost items of post but we shall have no liability whatsoever for any costs arising from the loss of such items. You acknowledge that it is your responsibility to ensure you and/or the Applicant retain any relevant proof of posting;
- (f) we accept no liability whatsoever for the accuracy of information provided by you, the Applicant, the DBS, Disclosure Scotland or Experian Limited (or any successor bodies or companies). We do not accept any liability whatsoever for the use of such information in any way; and
- (g) you acknowledge and agree that no Disclosure can be used to confirm the identity of any Applicant and accordingly, we accept no liability whatsoever for any losses arising as a result of mistaken identity (howsoever arising).

7.3 Any disputes regarding information contained within a Disclosure should at first be notified in writing to us. We will (at our discretion) either raise the dispute directly with the DBS/Disclosure Scotland or provide you with details of the DBS/Disclosure Scotland process for dealing with such disputes.

7.4 We shall maintain in force the following insurance policies:

- (a) public liability insurance with a limit of at least £5,000,000 per claim;
- (b) professional indemnity insurance with a limit of at least £500,000; and
- (c) employee liability insurance with a limit of at least £10,000,000.

Notwithstanding and without prejudice to any other provisions in these terms and conditions our entire aggregate liability to you in respect of any losses falling under the above categories of insurance shall be limited to the amounts set out above against the relevant category.

7.5 This clause 7 shall survive termination of the Contract.

## **8. TERMINATION**

8.1 Without limiting our other rights or remedies, either of us may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing of the breach;
- (b) 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 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 Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) 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 (where a company) 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;

- (d) 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 (being a company) 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;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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 its assets and such attachment or process is not discharged within 14 days;
- (g) 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);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) 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 8.1(b) to clause 8.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

8.2 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract (or any other contract between us) on the due date for payment.

8.3 Without limiting our other rights or remedies, we shall have the right to suspend provision of the Services under the Contract or any other contract between us if you become subject to any of the events listed in clause 8.1(b)) to clause 8.1(l), or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under the Contract (or any other contract between us) on the due date for payment.

## **9. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **10. GENERAL**

10.1 We shall not be liable to you as a result of any delay or failure to perform our obligations under this Contract as a result of an event beyond our reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving our workforce 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 suppliers, subcontractors or Government agencies.

10.2 Neither party may assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract without the written consent of the other party (such consent not to be unreasonably withheld or delayed) SAVE THAT we may assign all of our rights under any Contract to any other company in our Group (as defined in the Companies Act 2006) or to the buyer of all or substantially the whole of our disclosure and identity verification business.

10.3 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day (being a day, other than a Saturday, Sunday or public holiday, when banks in London are open for business) after posting, or if delivered by commercial courier, on the date and at

the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission. This clause shall not apply to the service of any proceedings or other documents in any legal action.

- 10.4 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 10.5 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 10.6 Nothing in any Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 10.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 10.8 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by us.
- 10.9 The Contract, 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 construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## **11. INTERPRETATION**

11.1 In these Conditions, the following rules apply:

- (a) references to terms defined by the DBS (including in any glossary of terms provided by them from time to time on their website) shall apply as if defined in these Conditions;
- (b) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (c) a reference to a party includes its successors or permitted assigns;
- (d) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (e) 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; and
- (f) a reference to **writing** or **written** includes faxes and e-mails.

### **Appendix – Prescribed Wording for Identity Verification Services consent**

“You may undertake a search with an external organisation for the purposes of verifying my identity. To do so the organisation (Experian Limited) may check the name, address and date of birth I supply against any particulars on any database (public or otherwise) to which they have access. A record of the search will be retained, but will not be visible to other parties or affect my credit rating.”

#### **Paper Registration**

**If you are viewing these Terms and Conditions in paper form, please sign in the box below to indicate your acceptance. If you are registering with DDC online, you are not required to sign this document, as your consent is given automatically as you progress through the registration process. For paper copies, once you have signed below, please send to DDC Ltd., 1282a, Melton Rd. Syston, Leicester, LE7 2HD.**

Signature	
Print Name	
Company	
Position	
Date	