

CRIMINAL RECORD AND BARRING SERVICE LTD

- and -

CUSTOMER

End User Licence Agreement
(for the provision of software as a service)

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This Licence Agreement (“**Licence**”) is a legal agreement between you (“**Customer**”, “**you**”) and Criminal Record and Barring Service Ltd, a company registered in England and Wales with company registration number 08902474 whose registered office is at Kemp House, 152 City Road, London, EC1V 2NX (“**We**”, “**Supplier**”, “**Us**”).

We license access to the Service to you on the basis of this Licence. We do not sell any Software or any Documentation to you. We remain the owners of the Software and Documentation at all times.

IMPORTANT NOTICE TO ALL USERS:

BY PLACING AN ORDER AND/OR LOGGING INTO OUR SYSTEMS AND/OR INDICATING YOUR ACCEPTANCE OF THESE TERMS BY MARKING THE APPROPRIATE BOX YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU. THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CONDITION 12.

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT PERMIT YOU TO ACCESS AND/OR USE, AND WILL NOT LICENSE, THE SOFTWARE AND DOCUMENTATION.

Operative Provisions:

1. INTERPRETATION

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

“Application Fee” the fee(s), including third party disbursement fees (for example, the DBS and/or DS fee as detailed in Schedule 1) as detailed at Schedule 1 which are payable by the Customer to the Supplier for the provision of the Services.

"Authorised User" an employee of the Customer who is authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2.4.

“Back-Up Policy” see “Documentation”.

"Business Day" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Change of Control" the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and

controls, controlled and the expression **change of control** shall be construed accordingly.

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| "Confidential Information" | information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10. |
| "Customer Data" | the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services. |
| "DBS" | Disclosure and Barring Service. |
| "Documentation" | the document(s) made available to the Customer by the Supplier online via our Website or such other web address notified by the Supplier to the Customer from time to time which sets out, inter alia; <ol style="list-style-type: none">1. a description of the Services;2. the user instructions for the Services;3. the Privacy and Security Policy; and,4. the Back-Up Policy. |
| "DS" | means Disclosure Scotland. |
| "Effective Date" | the date this agreement is entered into. |
| "Forecast" | the number of applications the Customer intends to make via the Service within the following twelve months from the date of that forecast. |
| "Intellectual Property Rights" | copyright, trade marks, design rights, patents, business names and domain names, rights in get-up, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| "License Fee" | the License Fee of £49.99 inc VAT (or as otherwise specified to the Customer by the Supplier from time to time) which is payable by the Customer to the Supplier for the User |

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| | Subscription. |
| "Normal Business Hours" | 9.00 am to 5.00 pm local UK time on each Business Day. |
| "Privacy and Security Policy" | see the privacy and security documents comprising part of the Documents |
| "Services" | the subscription services provided by the Supplier to the Customer under this agreement via our Website. |
| "Software" | the online software applications provided by the Supplier as part of the Services. |
| "Subscription Term" | means the term of this agreement. |
| "Support Services Policy" | the Supplier's policy for providing support in relation to the Services as made available via the Website. |
| "User Subscription" | the user subscription purchased by the Customer pursuant to clause 2.1 which entitles Authorised Users to access to the Services and the Documentation in accordance with this agreement via the Website. |
| "Virus" | any thing or device (including any software, code, file or program) 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 program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program 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. |
| "Website" | www.criminalrecordandbarringservice.co.uk or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation. |

- 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 e-mail.
- 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. USER SUBSCRIPTION

- 2.1 Subject to the Customer paying the License Fee and Application Fee and agreeing to the restrictions set out in this clause 2 and the other terms and conditions of this agreement (and to satisfactorily passing a credit reference check if appropriate), the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
 - 2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 2.2.2 where an individual ceases to be an Authorised User, the Customer shall inform the Supplier of the same and the Supplier shall, at its absolute discretion, issue authorisation details and credentials for a replacement Authorised User;

- 2.2.3 each Authorised User shall keep a secure password for his use of the Services and Documentation, and that each Authorised User shall keep his/her 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 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 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;
 - 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; and
 - 2.2.7 if any of the audits referred to in clause 2.2.5 reveal that the Customer has underpaid License Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in Schedule 1 within 10 Business Days of the date of the relevant audit.
- 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 is in breach of the Content Standards 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:
 - (a) and except to the extent expressly permitted under this agreement, 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 reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; 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 21.1, 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; and
- 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 Customer hereby warrants that they shall not use data provided by the Supplier via the Service in such a way to contravene the Data Protection Act 1998 and that it will not, through any act or omission do anything which puts the Supplier in breach of the Data Protection Act 1998.
- 2.7 The Customer warrants that they are and will remain compliant with the requirements of the DBS and/or DS and shall take no action nor make any omissions that puts the Supplier in breach of DBS and/or DS terms.
- 2.8 The Customer warrants that it will provide the correct definition attributed by the DBS and/or DS 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".
- 2.9 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.
- 2.10 The Supplier 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 Supplier, the Supplier shall, without any liability to the Customer, be entitled to terminate this agreement with immediate effect, in which case the Supplier will refund to the Customer any fees already paid under this agreement.

3. SERVICES AND ACCESS

- 3.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of 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 10.00 pm to 6.00 am UK time; and
 - 3.2.2 unscheduled maintenance performed outside Normal Business Hours,
- 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 in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 3.4 The Supplier shall provide to the Customer an element of its Services by Short Messaging Service where the Customer has provided a working UK mobile telephone number to the Supplier.

4. CUSTOMER DATA

- 4.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2 The Customer shall not hold data provided to it through the Service for more than six months.
- 4.3 The Supplier shall provide the Customer with access links to enable the Customer to download clear certificates (i.e. where there are no citations) returned as part of the Service for a period of no more than six months from the date the link first becomes live.
- 4.4 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up (if any) of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted

by the Supplier to perform services related to Customer Data maintenance and back-up).

4.5 The Supplier shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data.

4.6 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

4.6.1 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;

4.6.2 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and

4.6.3 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

5. THIRD PARTY PROVIDERS

5.1 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/or the Supplier's website and that it does so solely at its own risk. The Supplier makes no representation 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.

5.2 The Supplier shall not be liable for any breaches of this agreement resulting directly or indirectly from the action and/or inaction of DBS and/or DS, including, without limitation, any change to the DBS and/or DS code of practice.

6. SUPPLIER'S OBLIGATIONS

6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

- 6.2 The undertaking at clause 6.1 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. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:
- 6.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 6.2.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 The Supplier will make reasonable endeavours to provide the Customer with a single point of contact "Dedicated Account Manager". Such individual shall be notified to the Customer during the provision of the Service.
- 6.6 The Supplier will make reasonable endeavours to ensure the Dedicated Account Manager is available from 9:00am to 5:00pm on any Business Day.
- 6.7 The Supplier reserves the right to charge the Dedicated Account Manager for any time and without prior notice to the Customer including, without limitation, in the event of any temporary absence of the Dedicated Account Manager, for example due to sickness or leave.

7. **CUSTOMER'S OBLIGATIONS**

The Customer shall:

- 7.1.1 provide the Supplier with:

- (a) all necessary co-operation in relation to this agreement; and
- (b) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- 7.1.2 provide a true, complete and accurate Forecast on the Effective Date and from time to time as the suppliers require. The parties agree that the Supplier will use the information provided in the Forecast to calculate the relevant Application Fees. The Supplier reserves the right to amend the Application Fees due if the Forecast proves to be inaccurate.
- 7.1.3 ensure that all information provided to the Supplier is accurate and correct and that it has all necessary permissions and consent to provide such information to the Supplier in accordance with this agreement and that such information is provided in accordance with the then correct DBS and/or DS code of practice and/or terms.
- 7.1.4 comply with all applicable laws and regulations with respect to its activities under this agreement;
- 7.1.5 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.6 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- 7.1.7 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;
- 7.1.8 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- 7.1.9 be solely responsible for procuring and maintaining 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;

- 7.1.10 be responsible for ensuring it has all necessary third party permissions required to enable it to enjoy the Service;
- 7.1.11 comply with any requests made by the Supplier where it is subject of an audit of the DBS and/or DS; and,
- 7.1.12 ensure that their use of the Service adheres to relevant legislation, including, without limitation, the Rehabilitation of Offenders Act 1974, the Exceptions Order 1975 (as applied to the Rehabilitation of Offenders Act 1974) and the Data Protection Act 1998.

8. CHARGES AND PAYMENT

- 8.1 The Customer shall pay the License Fee and Application Fee to the Supplier in accordance with this clause 8 and Schedule 1.
- 8.2 Payment shall be calculated based on the Forecast provided by the Customer to the Supplier in accordance with this agreement.
- 8.3 Where the Forecast is either in excess or short of the applications made via the Service in any given period, the Supplier reserves the right to adjust the Application Fee in accordance with Schedule 1.
- 8.4 The Customer shall, in good time to give effect to these terms and conditions, provide to the Supplier valid, up-to-date and complete credit card details to the Supplier and any other relevant valid, up-to-date and complete contact and billing details which the Supplier requests.
- 8.5 The Supplier may require the Customer to pay the Application Fees by way of direct debit where they make levels of use of the Service which, in the Suppliers reasonable opinion, merit payment by direct debit. Where the Customer is paying by direct debit, the Customer will pay the direct debit fee detailed in Schedule 1 (as amended from time to time) in each month applications are made.
- 8.6 Where payment is made by credit card, the Customer shall also be liable to pay a credit card transaction fee as detailed at Schedule 1.
- 8.7 the Customer hereby authorises the Supplier to bill such credit card or other payment method as elected:
 - 8.7.1 on or after the Effective Date for the License Fee; and/or
 - 8.7.2 where the Service is used in excess of 100 times per month, on a weekly basis;
 - 8.7.3 Where the Service is used less than 100 times per month, on a monthly basis;

- 8.7.4 subject to clause 13.1, for the Application Fee payable as determined by Schedule 1;
- 8.8 Payment of any invoice is due immediately on the date of the invoice. If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- 8.8.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 8.8.2 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 Barclays Bank Plc. from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.9 All amounts and fees stated or referred to in this agreement:
- 8.9.1 shall be payable in pounds sterling; and
- 8.9.2 are, subject to clause 12.4, non-cancellable and non-refundable;
- 8.9.3 are exclusive of value added tax unless indicated otherwise, which shall be added to the Supplier's invoice(s) at the appropriate rate unless otherwise indicated by the Supplier.
- 8.10 The Supplier shall be entitled to increase the License Fee, and/or the Application Fees upon 30 days prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

9. PROPRIETARY AND INTELLECTUAL PROPERTY RIGHTS

- 9.1 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, or in, 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.
- 9.2 The Customer grants an irrevocable world wide royalty free licence of its Intellectual Property rights to the Supplier except where such Intellectual Property is Confidential Information.
- 9.3 The Customer acknowledges that, in order to enjoy the benefit of the Services, it may be necessary to grant a licence to Customer Data to third parties including, without limitation, DBS and/or DS.

9.4 The Customer acknowledges that it may need to obtain licenses from and/or pay fees to third parties such as, without limitation, the DBS and/or DS to enable it to enjoy the benefits of the Services.

10. **CONFIDENTIALITY**

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

10.6 The parties acknowledge that Customer Data is not Confidential Information.

10.7 This clause 10 shall survive termination of this agreement, however arising.

10.8 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.

11. INDEMNITY

11.1 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 the Customer's use of the Services and/or Documentation, provided that:

11.1.1 the Customer is given prompt notice of any such claim;

11.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

11.1.3 the Customer is given sole authority to defend or settle the claim.

11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality (to the extent any or all of the above are enforceable in England and Wales), and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

11.2.1 the Supplier is given prompt notice of any such claim;

11.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

11.2.3 the Supplier is given sole authority to defend or settle the claim.

11.3 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.

11.4 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:

11.4.1 a modification of the Services or Documentation by anyone other than the Supplier; or

11.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

11.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

11.5 The foregoing and clause 12.4 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.

12. **LIMITATION OF LIABILITY**

12.1 This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

12.1.1 arising under or in connection with this agreement;

12.1.2 in respect of any use made by the Customer of the Services and Documentation or any part of them; and

12.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

12.2 Except as expressly and specifically provided in this agreement:

12.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation 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 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;

12.2.2 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

12.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

12.3 Nothing in this agreement excludes the liability of the Supplier:

12.3.1 for death or personal injury caused by the Supplier's negligence; or

12.3.2 for fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.2 and clause 12.3:

12.4.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs,

damages, charges or expenses however arising under this agreement;
and

- 12.4.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total License Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

13. **TERM AND TERMINATION**

13.1 This agreement shall commence on the Effective Date and shall continue unless:

- 13.1.1 either party notifies the other party of termination, in writing, in which case this agreement shall terminate with immediate effect; or

- 13.1.2 otherwise terminated in accordance with the provisions of this agreement;

13.2 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:

- 13.2.1 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 28 days after being notified in writing to make such payment;

- 13.2.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

- 13.2.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

- 13.2.4 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;

- 13.2.5 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;

- 13.2.6 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;
 - 13.2.7 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;
 - 13.2.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 13.2.9 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;
 - 13.2.10 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;
 - 13.2.11 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 13.2.4 to clause 13.2.10 (inclusive);
 - 13.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 13.2.13 there is a change of control of the Customer.
- 13.3 On termination of this agreement for any reason:
- 13.3.1 all licences granted under this agreement shall immediately terminate;
 - 13.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - 13.3.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession immediately.
 - 13.3.4 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.

14. **FORCE MAJEURE**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications 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 or sub-contractors.

15. **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.

16. **VARIATION**

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

17. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. **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.

19. **SEVERANCE**

19.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. **ENTIRE AGREEMENT**

20.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

20.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

21. **ASSIGNMENT**

21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22. **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).

23. **THIRD PARTY RIGHTS**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. **NOTICES**

24.1 Any notice required to be given under this agreement shall be in writing or by e-mail.

24.2 Where a notice is given by writing it shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.

24.3 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 12:00 pm on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or

recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

- 24.4 Where a notice is given by e-mail from the Supplier to the Customer, it shall be to the e-mail address used by the Supplier to provide the Services to the Customer (which may, as example, have been provided by the Customer to the Supplier when registering to use the Service;
- 24.5 Where a notice is given by e-mail from the Customer to the Supplier, it shall be sent to the address: info@crbsltd.co.uk or as otherwise indicated by the Supplier from time to time.
- 24.6 Notice delivered by e-mail shall be deemed to have been received twenty four hours after being sent unless the sender has received a response from the recipient sooner, or where a failure notice is returned.

25. **GOVERNING LAW AND JURISDICTION**

- 25.1 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 construed in accordance with the law of England and Wales.
- 25.2 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).

SCHEDULE 1

Application Fees

The Customer shall pay the Supplier the relevant Application Fee dependant on the level of Service required by the Customer and as detailed below.

| Product | [X] number of Searches Per Annum | DBS Charge (each) | [CRBS Ltd Fee] (each incl VAT) | Total Charge (each incl VAT) |
|-----------------------------|----------------------------------|--------------------------|---------------------------------------|-------------------------------------|
| Enhanced Disclosure | 1 – 100 | £44.00 | £22.00 | £66.00 |
| | 101 – 250 | £44.00 | £20.00 | £64.00 |
| | 251 – 500 | £44.00 | £16.00 | £60.00 |
| | 501 and over | £44.00 | £14.00 | £58.00 |
| Standard Disclosure | 1 – 100 | £26.00 | £22.00 | £48.00 |
| | 101 – 250 | £26.00 | £20.00 | £46.00 |
| | 251 – 500 | £26.00 | £16.00 | £42.00 |
| | 501 and over | £26.00 | £14.00 | £40.00 |
| Volunteer Disclosure | 1 – 100 | £0.00 | £22.00 | £22.00 |
| | 101 – 250 | £0.00 | £20.00 | £20.00 |

| | | | | |
|---|--------------|--------|--------|---------------|
| Basic Disclosure (Disclosure Scotland) | 251 – 500 | £0.00 | £16.00 | £16.00 |
| | 501 and over | £0.00 | £14.00 | £14.00 |
| | 1 and over | £25.00 | £22.00 | £47.00 |

SCHEDULE 2

SERVICE LEVEL AGREEMENT (SLA)

Criminal Records and Barring Services Ltd (“CRBS”) Online DBS and/or DS service

CRBS will be responsible for Countersigning DBS and/or DS Disclosure applications electronically.

CRBS will update, enhance and upgrade its systems at its sole discretion. CRBS will use commercially reasonable endeavours to ensure that the system is always compliant with the latest DBS and/or DS e-bulk schema.

For the avoidance of doubt, CRBS has no control over the length of time taken for DBS and/or DS Disclosure results to be returned by the DBS and/or DS, or for the contents of any DBS and/or DS Disclosure results.

1. Performance & Availability

- 1.1 CRBS aim to make the system as available as reasonably possible, however at times there will be a requirement to suspend all or part of the system for a period, without notice, for maintenance or other such purposes:
- 1.2 The system will normally be available 24 hours a day, seven days a week save for reasonable maintenance windows at detailed at 1.1 and/or as a result of events outside our control;
- 1.3 The system will normally be available from any location that is not subject to fire walling or filtering beyond CRBS's control subject to your connection to the internet and other systems requirements, all of which are your responsibility;
- 1.4 Maintenance windows:
 - 1.4.1 The following times will be “at risk” times, during which the system may be unavailable due to maintenance and therefore access to the system may be prevented without notice; 12pm – 1am Fridays, and Saturdays, and 8am – 8pm Sunday. You acknowledge that the above is for information only and that the system may be unavailable for maintenance at times other than those listed above;
 - 1.4.2 CRBS reserves the right, at its sole discretion, to temporarily suspend the system without notice to carry out preventative maintenance or to protect the integrity of the service;
 - 1.4.3 CRBS will endeavour where possible to notify customers of any maintenance being carried out either within or outside of these times 48 hours in advance, where possible.

2. Support

- 2.1 CRBS will be available to receive customer calls between the hours of 9am and 5pm on days CRBS is open for business.
- 2.2 CRBS will use reasonable endeavours to assist with any issues relating to the availability of the system and any queries concerning use of the system.
- 2.3 CRBS currently operates to the following performance targets for standard usage issues:
 - 2.3.1 85% of severity 1 cases will be resolved within 3 working days;
 - 2.3.2 80% of severity 2 cases will be resolved within 10 working days;
 - 2.3.3 80% of severity 3 cases will be resolved within 20 working days;
 - 2.3.4 80% of severity 4 cases will be resolved within 30 working days; and
 - 2.3.5 Less than 15% of cases will be reopened.

| <u>Severity</u> | <u>Usage case (example only)</u> | <u>Target response time</u> |
|------------------------|--|------------------------------------|
| 4 | Feature N/A – no work around apparent | 8 working hours |
| 3 | Module/Key process unavailable – not time critical | 8 working hours |
| 2 | Module/Key process unavailable – time critical | 4 working hours |
| 1 | Entire system unavailable | 2 working hours |

- 2.4 Performance targets may be updated from time to time.
- 2.5 The severity of a case is to be assessed and allocated by CRBS acting reasonably.

3. Security

- 3.1 Customer's data is kept securely and CRBS will use commercially reasonable endeavours to ensure that:
 - 3.1.1 All personal data on the system is stored securely and encrypted to AES 256 bit level;
 - 3.1.2 All CRBS employees involved in the provisioning of the service are trained, DBS and/or DS checked and authorised to handle any data;
 - 3.1.3 All communications containing confidential data are secure and encrypted using SSL encryption;

3.1.4 Physical security within the data centre including:

- (a) External CCTV providing 24/7 monitoring;
- (b) Security personnel monitoring the site at all times; and,
- (c) Redundant power supplies and generators.

3.1.5 Ensure that CRBS staff or contractors associated with the provisioning of the service are duly authorised and trained to administer the same.

4. **Uniform Resource Locator**

By default CRBS will deploy the system to the customer at a URL in the format https://www.dbsassist.co.uk/*** (where *** represents the agreed name by both parties).