

DISCLOSURE SERVICES LTD
(Company No: 04198359)

Terms of Business

(“the Supplier”)

1. Definitions

1.1 In these Terms of Business (“the Terms”) the following definitions apply:-

“the Customer” means the person, firm or corporate body together with any subsidiary or associated company as defined by the Companies Act 1985 to which the Service is supplied;

“User” means the Application Manager or ID Checker nominated by the Customer;

“Applicant” means the individual, requiring a Criminal Record/Barred List Check or other background check;

“the Supplier” means Disclosure Services Ltd registered in England and Wales with Company Number 04198359;

“Data Protection Legislation” the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

“DBS” means the Disclosure and Barring Service, PO Box 110, Liverpool, L69 3EF;

“Disclosure Scotland” means Disclosure Scotland, PO Box 250, Glasgow, G51 1YU;

“AccessNI” means Access Northern Ireland, PO Box 1085 Belfast BT5 9LE;

“Services” The supply of Disclosure and Barring Service/Disclosure Scotland/ Access Northern Ireland and External ID Validation checks and Employee Credit Check Services in accordance with the Supplier’s form completed by the user online and submitted to the Supplier from time to time (“the Fee”).

1.2 Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.

1.3 The headings contained in these Terms are for convenience only and do not affect their interpretation.

1.4 The Supplier reserves the right to make changes to these Terms and Conditions at any time on written notice to the Customer and/or Applicant.

2. THE CONTRACT

2.1 The Supplier shall supply the Services to the Customer using reasonable care and shall and will use its reasonable endeavours to meet any performance dates agreed but time shall not be of the essence.

2.2 No variation or alteration to these Terms shall be valid unless approved by the Supplier in writing and these Terms prevail over any terms of business or purchase conditions of the Customer.

3. Customer’s obligations

3.1 The Customer shall:-

a) co-operate with the Supplier in all matters relating to the Services;

b) provide the Supplier with such information and consents as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

c) comply with all applicable laws and Codes including but not limited to [DBS/Disclosure Scotland/Access NI Codes of Practice]

4. Compliance with Data Protection Legislation

4.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party’s obligations or rights under the Data Protection Legislation. In this clause 4, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.

4.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

4.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for purposes of the Supplier supplying the Services.

5. Charges/Services

5.1 The Customer agrees to pay the charges of the Supplier as notified at the commencement of the Services and as may be varied from time to time during the Services by the Supplier in writing on not less than 14 days written notice. [For DBS/Disclosure Scotland/Access NI services, the charges are calculated at the prevailing DBS/Disclosure Scotland/Access NI charge plus a counter-signatory/admin charge per application]. Other charges will be applicable for additional requested and supplied by 3rd parties and may be applicable for additional services ie, delivery charges and unforeseen expenses. VAT will be charged on all Services where applicable in addition to the Fee.

5.2 The fee for a Disclosure and requested additional checks is a processing fee and it is charged at the point of application. The fee will either be collected by direct debit 14 days from invoice date or be deducted from the Customer’s “Pay as you Go facility”. If the Customer’s Pay as you Go facility does not have sufficient credit available, the Supplier will not be obliged to provide the Services. Any invoice not collected by Direct Debit or settled from the Customer’s “Pay as you Go” facility will incur an additional £2.50 administration fee per invoice.

5.3 The Customer is responsible for charges and other expenses relating to the application unless otherwise

	arranged even if the application is rejected by the DBS/Disclosure Scotland/AccessNI and other requested check suppliers.		or otherwise, arising under or in connection with the Contract.
5.4	Customer's Failure to Complete Process – where a Customer fails to provide requested information or documentation within 56 days of approving an application form, the Supplier reserves the right to withdraw the application and request the process be re-started. This may incur an additional Fee and VAT charged at the applicable rate.	6.3	This clause 6.3 sets out specific heads of excluded loss:
		I.	Subject to clause 6.1, the types of loss listed in clause 6.3(b) are wholly excluded by the parties
		II.	The following types of loss are wholly excluded:
		(i)	Loss of profits
		(ii)	Loss of sales or business.
		(iii)	Loss of agreements or contracts.
		(iv)	Loss of anticipated savings.
		(v)	Loss of use or corruption of software, data or information.
		(vi)	Loss of or damage to goodwill.
		(vii)	Indirect or consequential loss.
5.5	The online application results as an electronic Indicative Notification is returned by DBS direct to the Supplier and User. For a DBS Enhanced and Standard level check a paper Disclosure Certificate is posted to the Applicant directly from DBS to the address supplied. For a DBS Basic check the Applicant chooses;	6.4	The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 2. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
	I. if they want to receive an electronic certificate to their personal account with DBS with no access to the Supplier		
	II. as above but allow access to the Supplier		
	III. as above and also receive a paper certificate to the applicant supplied address.		
5.6	The online Disclosure Scotland Basic level check results is returned directly to the Supplier and User as an Indicative Notification. The paper certificate will be posted directly to the address supplied by the Applicant. For enhanced, standard and PVG checks certificates will also be posted to the address supplied by the Applicant by Disclosure Scotland.	6.5	Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
5.7	The online AccessNI Standard and Enhanced level checks provides an electronic result only available via the Users online account. The applicant can give permission to the User/Supplier to view. No paper certificates are supplied	6.6	This clause 6 shall survive termination of the Contract.
5.8	If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.	6.7	The Supplier shall not be liable for any loss or damages or expenses of any kind due to inaccurate information on a completed DBS/Disclosure Scotland/Access NI application form or any other checks requested.
5.9	All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).	7.	Customer Login Responsibilities
6. Liability		7.1	All Customer's User accounts must be protected by a password that complies with the Supplier's password requirements, and the password requirement must not be bypassed or neutralised. Passwords should not be written down in a public place or stored electronically in an unencrypted manner.
6.1	Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:	7.2	Users should not share their passwords with anyone.
	I. death or personal injury caused by negligence;	7.3	If a User suspects that their account or password has been compromised, they must report this immediately to the Supplier.
	II. fraud or fraudulent misrepresentation; and	7.4	Anyone with knowledge of unauthorised access to an account or password or misuse of an account or password should notify the Supplier immediately.
	III. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).	7.5	It is the Customer's responsibility to notify the Supplier when a User leaves or no longer requires access to the service.
6.2	Subject to clause 6.1, the Supplier's total liability to the Customer shall not exceed £5,000,000. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty,	7.6	The Supplier, its commissioners, employees, officers and agents shall not be liable for any loss or damages or expenses of any kind due to Customer's negligence or misuse of their password.

8. Termination

8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 3 months' written notice.

8.2 Without affecting any other right or remedy available to it, either party 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 any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

I. the Customer fails to pay any amount due under the Contract on the due date for payment; or

II. there is a change of control of the Customer.

8.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

9. General

9.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

9.2 Assignment and other dealings

Neither party may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract or the work product of any Services supplied without the prior written consent of the Supplier.

9.3 Confidentiality

I. Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.3(b).

II. Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.3; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.4 Third Party Rights

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

9.5 **Governing Law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

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