

Terms and Conditions

The client's attention is in particular drawn to the provisions of condition 11.4 and 11.5.

www.onlinedbs.co.uk is a site operated by New Directions (Holdings) Ltd, a company registered in England and Wales, Company Number 05714010, registered Office at 1st Floor, Harlech Court, Bute Terrace, Cardiff, CF10 2FE

1. INTERPRETATION

1.1 In these conditions the following words have the following meanings:

Act: Data Protection Act 1998;

Applicant: an individual who is the subject of checks carried out in the performance of the Services

Client: the person, firm or company together with any Holding Company Subsidiary or Associated Company who purchases the Services from the Company;

Company: New Directions (Holdings) Ltd, a company registered in England and Wales, Company Number 05714010, registered Office at 1st Floor, Harlech Court, Bute Terrace, Cardiff, CF10 2FE

Consent: means the electronic or paper declaration made by the Applicant authorising the Company to undertake and pass to the Client any checks carried out in the conduct of the Services in relation to that Applicant, compliant with Data Protection Laws;

Contract: any contract between the Company and the Client for the provision of services, incorporating these Conditions;

Data Protection Laws: means the Data Protection Act 1998, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;

DBS: means The Disclosure and Baring Service who are responsible for processing and issuing DBS checks for England and Wales

Disclosure: the online or paper certificate issued by the Disclosure and Barring Service through the System which details an Applicant's criminal convictions or warrants that no such information is attributable to the Applicant.

Losses: means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands;

Services: the Services referred to in the Contract to be supplied to the Client by the Company (including any part or parts of them).

System: the software supplied to the Client under these terms, along with any associated documentation and media that forms part of the Services

Terms: means these terms of business (including the attached schedules) together with any applicable quotation or order confirmation form;

Order: any order from the Client to the Company for the supply of Goods and or Services incorporating these conditions in such form as the Company may determine from time to time.

1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended,

consolidated, modified, extended, re-enacted or replaced.

1.3 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these conditions headings will not affect the construction of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of Order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Client's purchase order, confirmation of Order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's Services and any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by the Group Director of Operations of the Company.

Nothing in this condition will exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each Order for Services by the Client from the Company shall be deemed to be an offer by the Client to purchase the Services subject to these conditions.

2.5 No Order placed by the Client shall be deemed to be accepted by the Company until a written acknowledgement of Order is issued by the Company or (if earlier) the Company performs the Services to the Client.

2.6 The Client must ensure that the terms of its Order and any applicable specification are completely and accurately recorded in its Order and the Company shall have no liability whatsoever with regard to any Order made which is not accurate.

2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of Order to the Client. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1 The description of the Services shall be as set out in the Company's quotation, forming part of the Contract.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They will not form part of this Contract and should not be relied upon in any form.

3.3 The Company shall not be responsible for clarifying or investigating actual or claimed discrepancies or anomalies identified during the process of, or contained in the results of, the Disclosure either with the Applicant or with any third party.

3.4 The Company relies on information supplied by the Client, Applicant and by third parties in providing Services. The obligations of the Company are limited to requesting Disclosures from third parties and providing these results through the System, to the Client

3.5 The Client accepts responsibility for the selection of the Service provided by the Company to achieve the Client's intended results, and the Company does not warrant the suitability or outcome of the Service in relation to any specific requirement.

3.6 The Client acknowledges that it is licensed to use the Services including the System and Documentation only in accordance with the express terms of this Agreement and not further or otherwise. Save as provided in this Agreement, the Client shall not be entitled to sub-licence, assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the Company.

4. PERFORMANCE

4.1 Unless otherwise agreed in writing by the Company, performance of the Services shall take place at the Company's place of business.

4.2 Any dates specified by the Company for performance of the Services are intended to be an estimate and time for performance shall not be made of the essence by notice. If no dates are so specified, performance will be within a reasonable time given the circumstances surrounding the performance of the Services.

4.3 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the performance of the Services (even if caused by the Company's negligence), nor will any delay entitle the Client to terminate or rescind the Contract unless such delay exceeds 180 days.

5. NON-PERFORMANCE

5.1 The quantity and or quality of any Services as recorded by the Company shall be conclusive evidence of the quantity and or quality of the Services performed unless the Client can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-performance of Services (even if caused by the Company's negligence) unless written notice is given to the Company within 2 days of the date when the Services would in the ordinary course of events have been performed.

5.3 Any liability of the Company for non-performance of Services shall be limited to performing the omitted Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Services.

6. DBS COMPLIANCE

6.1 The Company warrants and undertakes that at all times during the term of this Agreement that it will ensure that it is a Registered Body with the DBS and will at all times comply with the DBS's Code of Practice;

6.2 The Client warrants and undertakes that at all time during the term of this Agreement that it will ensure that:

i) It will store, handle and retain and dispose of the Disclosure Result strictly in accordance with the DBS Explanatory Guide – "Handling of DBS certificate information".

ii) Comply with all other DBS codes, policy requirements and regulations as amended from time to time.

7. CLIENT OBLIGATIONS

7.1 It is the responsibility of the Client to ensure that all staff are aware of the terms of this Agreement, including but not limited to those relating to use, copying, protection of the Company's intellectual property, the obligations detailed in Clause 6 relating to DBS compliance, and support and access by third party entities.

7.2 The Client shall be solely responsible for and liable to obtain or facilitate the receipt of Consent from any Applicant. Where Consent is provided to the Client, the Company shall be deemed to have the right to consider Consent to have been granted upon confirmation of such Consent by the Client in the form of placing an order.

Copies of Consent in respect of one of more Applicants shall be made available to the Company on request, either from time to time or generally.

7.3 The Client shall:

- i) ensure that all User accounts and other details are kept safe and secure;
- ii) not share User account details with any party not explicitly authorised by the Company;
- iii) withdraw the account details from any user acting in a malicious manner or otherwise outside of DBS Code of Practice or users no longer authorised to access the System;
- iv) be responsible for ensuring that a suitable connection is in place between the Client's sites that require the Service and the internet.
- v) ensure that any DBS checks requested or carried out only where Consent has been received, and where allowable as per DBS Code of Practice and relevant legislation.
- vi) ensure that any Disclosure Results are not kept any longer than necessary to make a suitable decision and in all cases not longer than 180 days from the date of issue. For the avoidance of doubt the Client shall be responsible for the secure handling and destruction of the Disclosure Results.
- vii) ensure they comply with any new or revised DBS guidance they are aware of, or as otherwise notified by the Company or a competent third party, or relevant legislation..
- viii) ensure that the content of any data, files, upload or other site content (a) do not contain any material that is illegal, obscene, pornographic, defamatory, blasphemous, libellous, or indecent, (b) does not infringe third party rights, and (c) does not breach copyright or any other relevant legislation, statute or regulation;
- ix) not use the Service in an attempt to gain unauthorised access to any service, network, account or data by any means;
- x) ensure all Applicants are made aware of their obligation to adhere to the DBS check process;
- xi) check and make a record of the evidence of identity provided by the Applicant to the Client, and record this in the manner required by the DBS, or as may reasonably be required by the Company;
- xii) ensure that they comply with all Data Protection Laws in the provision and receipt of personal data to and from the Company

8. PRICE

8.1 Unless otherwise agreed by the Company in writing the price for the Services shall be the price set out in the Company's written quotation, made up of the fixed fee DBS Disclosure cost and the Company non-refundable administrative fee.

8.2 The price for the Services shall be inclusive of any value added tax.

8.3 The price for the Services may be subject to any increases in third party costs incidental to the Company providing the Services and shall become effective upon 5 days notice being given by the Company to the Client of such increases.

8.4 Where the Client no longer requires the agreed Service and informs the Company of this in writing, prior to the submission of any application for a Disclosure as part of the Service, the fixed DBS Disclosure cost element of the price will be refunded to the Client within 14 days. The Company administrative fee is non-refundable.

8.5 Where the provision of the agreed Service has been commenced and any application for a Disclosure has been submitted to the DBS, the full price is non-refundable.

9. PAYMENT

9.1 Payment for the Services shall be paid in full by the Client prior to the provision of the Services by the Company, unless agreed otherwise in writing with the Company.

9.2 Any payment agreed in writing to be due after the provision of the Services shall be due within 14 days of the date of the Company's invoice.

9.3 Time for payment shall be of the essence.

9.4 No payment shall be deemed to have been received until the Company has received cleared funds.

9.5 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision and it is strongly advised that the Client takes out appropriate insurance cover which will adequately compensate them for any losses.

9.6 The Client shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client.

9.7 If the Client fails to pay the Company any sum due pursuant to the Contract the Client will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9.8 Where any payment is overdue the Company reserves the right to restrict access to the System until such time as any outstanding sums are paid in full.

10. WARRANTY

10.1 The Company does not give any warranties as to the accuracy of any information provided pursuant to Services supplied under the Contract. The Client acknowledges that the Services supplied under the Contract are based on information provided to the Company by third parties the accuracy of which the Company cannot control.

11. LIMITATION OF LIABILITY

11.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

(a) any breach of these conditions; and

(b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

11.4 Subject to conditions 11.2 and 11.3:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated

performance of this Contract shall be limited to the price paid to the Company by the Client; and

(b) the Company shall not be liable to the Client for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

(c) the Company shall not be liable to the Client for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the information provided to the Company by any third party independent databases or any other information source not forming part of the Company.

11.5 The Company expressly excludes all liability for the content or accuracy of the information that it receives or provides to the Client in the course of the Service, whether from the DBS or other third parties, and under no circumstance shall the Company be liable for any failure to verify the accuracy and completeness of the information provided by the DBS or other third parties, or conducting any further investigations or controlling the time taken by the DBS to process forms or issue Disclosures or any other failure by the Client to comply with its obligations detailed at clause 6 above.

11.6 The Client shall indemnify and keep indemnified the Company against any Losses incurred by the Company by reason of any proceedings, claims or demands by an Intermediary, the Applicant or any third party arising out of any non-compliance with, and/or as a result of, any breach of the Data Protection Laws by the Client, including the requirement to obtain valid Consent from the Applicant

12. ASSIGNMENT

12.1 The Client shall not be entitled to assign the Contract or any part of it without the prior written consent of the Group Director of Operations.

12.2 The Company may assign the Contract or any part of it to any person, firm or company.

13. FORCE MAJEURE

13.1 The Company reserves the right to defer the date of performance of the Services or to cancel the Contract or if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 180 days, the Client shall be entitled to give notice in writing to the Company to terminate the Contract.

14. PRIVACY POLICY

14.1 The Company may request the Client's personal details for the purpose of record keeping and administering the business. The Company values the Client's privacy and adheres to the data protection principles.. This statement outlines the Company's practices in relation to the collection and use of the information about the Client and should be read in conjunction with our Privacy Notice, provided with these Terms, and the Privacy Policy of the Disclosure and Barring Service which will be provided during the provision of the Services.

14.2 The Company is conscious of its responsibilities under Data Protection Laws.. The Company shall endeavour to process any information from the Client given to the Company, relating to the Client or the Client's property, from which the Client may be identified, in accordance with the Data Protection Laws. The Company shall not retain information relating to the Client any longer than is necessary.

14.3 On the Company's website the Company may use any information submitted to the Company to perform

the contract for the Services, to meet any legal obligations, and in our legitimate business interests. The types of personal information collected on these pages include, but is not limited to, the Client's name, home address, telephone numbers, facsimile numbers and email addresses.

14.4 As a general rule the information, which the Client supplies will be processed for the provision of the Services and to keep Client's information for the purpose of providing information to the Client about special offers, services, products and features provided by the Company that the Company thinks the Client may be interested in. The Company may provide any of the Client's personal information to third parties provided that the Client may notify the Company at any time in writing if they do not wish their personal details to be provided to third parties.

14.5 The Company endeavours to protect the information it collects and processes. The Company has put in place measures, which ensure the security of the information the Company collects. This is done to prevent unauthorised access. The Company takes reasonable steps to ensure that any member of staff who process information for the Company understands and complies with the Data Protection Laws.

14.6 While the Company endeavours that the information we hold about the Client is accurate, and where necessary kept up to date, the Company assumes, that in the absence of evidence to the contrary, that the information the Client provides the Company with is accurate. If the Company is in any doubt to the accuracy of the information the Client supplies to the Company then the Company may contact the Client to confirm the information.

14.7 Along with all other rights granted to the Client under the Data Protection Laws, that the Company shall respect and observe, the Client may at any time in writing either by post or email request to be informed of the personal information that the Company holds about the Client. The Client may request the information as a whole or limited to certain information of a particular nature. The Company shall comply with this request but, in the interest of your privacy only after the Company is supplied with such information by the Client as would reasonably be required to satisfy the Company as to the Client's identity. In the interests of the privacy of others, the Company would not be able to comply with such a request if it involved disclosing information about another person unless they consented to the disclosure or it was reasonable in all the circumstances to comply with the request without their consent.

15. GENERAL

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Client will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

15.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

16. COMMUNICATIONS

16.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission or email:

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Client by the Company; or
- (b) (in the case of the communications to the Client) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Client set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Client.

16.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- (b) if delivered by hand, on the day of delivery;
- (c) if sent by facsimile transmission or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

Signed (Client authorised representative)

Position

Date