

DATED 17th May 2018

(1) EUROCOM CI LTD

(2) <CLIENT>

**DBS CHECKS CONTRACT FOR THE
PROVISION OF
SOFTWARE AS A
SERVICE SOLUTION TO PROCESS DBS CHECKS**

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THIS CONTRACT is made the 17th day of May Two Thousand and Eighteen.

BETWEEN:

(1) **EUROCOM CI LTD** of Stonebridge House, 28-32 Bridge Street, Leatherhead, Surrey, KT22 8BZ (“the Supplier”) and

(2) **<CLIENT>** a private limited company registered under number **<xxxxxx>** and whose registered address is **XX**(“the Client”)

RECITALS:

The Client wishes to enter into this Contract for the Contract period and to be provided with Services on the terms and conditions appearing below.

1. DEFINITIONS AND INTERPRETATION “Client Data”

1.1 In these conditions, except where the context otherwise requires, the following expressions shall have the following meanings:

“Client Data”	Means all information, text, diagrams, images or sounds which are embodied in any electronic or tangible medium and which are supplied or in respect of which access is granted by the Client under this Contract or which the Supplier is required to generate under this Contract.
“Conditions”	Means these Conditions of Contract.
“Contract”	Means this contract entered into between the Supplier and the Client consisting of these Conditions and the Schedules and Annexes to them (if any).
“Contract Period”	Means the day from which the client accepts the supplier’s terms and conditions
“Contract Price”	Means the price exclusive of any applicable value added tax payable to the Supplier under this Contract in accordance with the Service Level Agreement Schedule 2 for the full and proper performance by the Supplier of its obligations under this Contract.

“Commencement Date”	Means the date of accepting terms and conditions
“DBS”	Means the Disclosure and Barring Service as established under the Protection of Freedoms Act 2012 which merged the functions of the Criminal Records Bureau and the Independent Safeguarding Authority.
“Default”	Means any breach of the obligations of either Party (included but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees or agents in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other
“E-Bulk”	Means the system enabling an E-Registered Body to submit DBS checks electronically.
“E-Broker”	Means Cantuim (or any other supplier we engage with as an e-Broker) as approved by the DBS.
“End User Terms”	Means the Experian Data Services End User Terms as set out in Schedule 3
“E-Registered Body	Means the Supplier
“Force Majeure Event”	Means any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the Client), lightning or earthquake, war, military operations, act of terrorism, riot or any strike action by DBS staff employed and the Identity Authentication Check organisation’s staff employed (if any) and having an effect on the provision of the Service under the Contract.
“Identity Authentication Checks Services”	Means the Experian Data Service called “Authenticate” also referred to as ‘Authorised Third Party Services’ .
“Intellectual Property Rights”	Means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise) applications for any of the foregoing, copyright, semiconductor topography rights, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether

registrable or not in any country (including the United Kingdom) and the right to sue for passing off but excluding any copyright, database rights and all other intellectual property rights covered under and in relation to the End User Terms.

“Party”

Means a party to this Contract.

“Registered Body”

Means an organisation approved and registered with the DBS as being authorised to apply for standard and enhanced DBS Disclosures on behalf of staff, volunteers or associates, or where the Registered Body is also a registered Umbrella Body with the DBS, also authorised to apply for Disclosures on behalf of 3rd party customer organizations in respect of their staff, volunteers, or associates.

“Services”

Means the services and obligations of the Supplier and being able to use the full ‘Software as a Service’ solution, namely managed services with admin access, and may include the Authentication Check Service function (if applicable).

“Service Level Agreement”

Means the Service Level Agreement for Managed Services with Admin access more particularly described in Schedule 2.

“Specification”

Means the specification as set out in Schedule 1

“System”

Means the electronic DBS interface system, Employmentcheck.org.uk with Identity Authentication Check Service function (if required), more particularly described in the Specification Schedule 1 and referenced in the Conditions to the Services shall include the System where the context admits.

“Total Value”	Means the total value of this Contract.
“Umbrella Body”	Means an organisation approved and registered with the DBS; as being authorised to apply for standard and enhanced DBS disclosures on behalf of third party customer organisations in respect of their staff, volunteers or associates.
“Upgrades”	Means upgrades and/or later versions of any System provided under this Contract.
“VAT”	Means value added tax chargeable under English law for the time being and any similar, additional tax
“Working Day”	Means Monday to Friday inclusive other than bank holidays, any other public holidays and the statutory day of the Supplier.

In this Contract except where the context otherwise requires:

1.2 Condition, Schedules and paragraph headings shall not affect the interpretation of this Contract.

1.3 A person includes a natural person, corporation or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors and permitted assignees.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force or made under it.

1.6 A reference to writing or written includes facsimile transmission and e-mail.

1.7 Where the words include(s), including or in particular are used in this Contract, they are deemed to have the words without limitation following them. Where the context permits, the words and otherwise are illustrative and shall not limit the sense of the words preceding them.

1.8 Any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.

1.9 Reference to employees of the Client shall be deemed to include the Client’s agent and sub-providers, or anyone acting on the Client’s behalf, including but not limited to, volunteers, temporary staff and workers who are engaged by the Client but who may not be

deemed to be an “employee” of the Services User under the Employment Rights Act 1996, unless the context otherwise requires.

1.10 The Contract constitutes the entire agreement and understanding between the Parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither Party excludes liability for fraudulent misrepresentations upon which the other Party has relied.

2. ACTS BY THE SUPPLIER

Any decision, act of thing which the Supplier is required or authorised to take or do under the Contract may be taken or done by any person authorised, either expressly or implied, by the Supplier to take or do that decision, act or thing.

4. WAIVER

4.1 The failure by either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

4.2 No waiver shall be effective unless it is communicated to the other Party in writing.

4.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

5. SEVERABILITY

If any Condition or provision of the Contract not being of a fundamental nature, is held to be unlawful, invalid or unenforceable by the court of tribunal in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

6. SOLE SERVICE PROVIDER

The Parties agree that the Supplier shall provide the Client with all Services and the Client warrants that it will not enter into any other agreement for the provisions of the Services with any other provider during the Contract Period.

7. COPYRIGHT

Copyright in the Contract Documents shall vest in the Supplier but the Client may obtain or make at its own expense any further copies of the Contract Documents required for use by the Client in relation to the Service.

8. SUPPLIER'S REPRESENTATIVE

The Supplier's Representative shall be our helpline phone number and helpline email address.

9. CLIENT'S REPRESENTATIVE

The Client's Representative shall be the Head of HR Delivery or such representative appointed by the Client to act in the name of the Client for the purposes of the Contract. The client's representative will be taken to be the person signing up to be the authorised person/manager on the DBS/eBulk account application.

10. COMMENCEMENT AND TERM

Subject to the earlier termination of this Contract in accordance with its provisions, this Contract shall commence on the Commencement Date and shall continue until the Supplier has been given one month notice of termination.

11. SERVICES PROVISION AND SYSTEM

11.1 PROVISION OF SERVICES

11.1.1 The Supplier acknowledges and it is agreed that in respect of the Services, it shall:

- (b) ensure secure administrative access to the System for staff members of the Client as set out in the relevant Service Level Agreement;
- (c) ensure training is provided for staff members of the Client as set out in the relevant Service Level Agreement;
- (e) be responsible for the maintenance and necessary upgrading of the System as required to meet statutory requirements or those levied by the DBS;
- (f) use all reasonable endeavours to ensure that they are only submitting disclosure applications for exempt positions as provided for in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended);
- (g) use all reasonable endeavours to ensure that they are only submitting disclosure applications in accordance with the disclosure eligibility criteria for relevant positions of employment;
- (h) take reasonable steps to ensure that applications for free of charge disclosures fall within the definition of a volunteer as described in the Police Act 1997 (Criminal Records) (Registration) Regulations 2006;
- (i) take reasonable measures to ensure that the Client verifies and validates (where necessary) the identity of the Applicant by complying with conditions that will be set administratively by the DBS and that it will exercise all due diligence when

completing disclosure application forms, in particular to ensure all mandatory data fields are completed correctly and in the correct format;

(j) be responsible for countersigning of the application form on behalf of the Client confirming that there is a legal entitlement to the check, the information provided is true and accurate and that the Supplier has not knowingly made a false declaration;

(k) ensure that any electronic systems, used to countersign applications comply with such specifications as may be set by the DBS;

(l) ensure that all applications are submitted to the DBS via e-bulk within one working day of submission of a valid and correctly completed application by the ID verifier or to archive or delete at the Supplier's sole discretion such applications that are incomplete or invalid or awaiting information from the Client and such information remains outstanding after two (2) working days ;

(p) takes reasonable measures that it and its Client comply with the DBS' Code of Practice including, but not limited to the policy on the usage, storage and retention of disclosure information;

(q) inform the Client about the outcome of any investigation of the DBS into the disputed DBS check from the Applicant and/or the Client'

(r) ensure that the certificate information is kept securely in lockable non- portable storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties in line with the Supplier's written security policy;

(s) ensure that it and the Client do not or authorise to reproduce any of the disclosure or its content, including photocopies or scanned images, unless with the prior agreement of the DBS or as a result of a stipulated requirement relating to the e-channel service;

(t) ensure that, in accordance with section 124 of the Police Act 1997 (as amended), Certificate Information is only passed onto those who are authorised to receive it in the course of their duties. The Supplier shall maintain a record of all those to whom Certificates or Certificate Information has been revealed and shall provide such record to the client for approval upon reasonable request by the Client;

(u) ensure that, once a recruitment (or other relevant) decision has been made by the Client or the Client's client(s), as the case may be, it shall not keep Certificate Information for any longer than is necessary, namely for a period of up to six (6) months to allow for the consideration and resolution of any disputes or complaints and, in very exceptional circumstances, for longer than six (6) months after having consulted with the DBS and in full consideration to the Data Protection and Human Rights of the Applicant before doing so;

(v) ensure that, once the retention period has elapsed, the Supplier will ensure that any Certificate Information is immediately destroyed by secure means such as shredding, pulping, burning or purging from the system. While awaiting destruction, Certificate Information shall not be kept in any insecure receptacle. The Supplier will not keep any photocopy or other image of the Certificate or any copy or representation of the contents of a Certificate. However, the Supplier may keep a

record of the date of issue of a Certificate, the name of the Client requesting the check, the name of the Applicant, the type of Certificate requested, the position for which the Certificate was requested, the unique reference number of the Certificate and the recruitment decision taken.

(w) ensure that the Supplier and its Client has a policy on the recruitment of ex-offenders;

(x) ensure that the Supplier complies with any reasonable request from the DBS for information that will enable it to make a decision on the suitability or continued suitability of registered persons;

(y) ensure that the Supplier informs the DBS of any changes to details held on the register including but not limited to changes to personal/organisational details;

(z) provide all necessary assistance and co-operation to the Client in line with the Service Level Agreement;

(aa) for the avoidance of doubt, not be responsible for the Client's or the Client's client(s) recruitment decisions;

(bb) be entitled to contact the DBS if it is not satisfied that the Client is entitled to ask an exempted question and/or believe that the Client may be acting illegally;

(cc) if required by the Client, provide the Client with the function for Identity Authentication Checks Service including enabling the function to obtain electronic consent as required under the End User Agreement as long as any such rights have not been terminated by the Identity Authentication Check organisation or, due to a breach of the End User Agreement terms and conditions, terminated by the Supplier, or as long as the Client requires these Identity Authentication Checks Service.

11.2 SERVICE STANDARD

11.2.1 The Supplier will endeavour to provide the Services and perform its obligations under the Contract with all due skill, care and diligence in accordance with good industry practice and all relevant professional and technical standards.

11.2.2 Without prejudice to Condition 11.2.1, the Supplier will use its reasonable endeavours to ensure that staff are appropriately experienced, qualified and trained to perform the Services and comply with the Supplier's obligations under this Contract.

11.2.3 For the avoidance of doubt, the Supplier expressly excludes all liability for the content or accuracy of the information which the System receives from the DBS and/or the Identity Authentication Check organisation and under no circumstances will the Supplier be liable for any failure to verify the accuracy and completeness of the information provided by the DBS and the Identity Authentication Check organisation or conducting any further investigations or controlling the time taken by the DBS or the Identity Authentication Check organisation to process forms or issue Disclosures or any other failure by the Client to comply with its obligations detailed under this Contract.

11.3 THE SYSTEM

The Supplier will provide the Client with a System as referred to within the Specification.

12. CLIENT'S RESPONSIBILITY

12.1 The Client shall:

- (b) ensure that all applicants for relevant positions or employment are notified in advance of the requirement for a disclosure and that the Client and/or the Client's client(s) notify all applicants of the potential effect of a criminal record history on the recruitment and selection process and any recruitment decision;
- (c) ensure, that the Client and/or the Client's client(s), as the case may be, establishes the true identity of the applicant through the examination of a range of documents as set out by the DBS'
- (d) ensure that the DBS checks required by it and its client's are the types of work, occupations or positions which can be DBS checked as listed in the Rehabilitation of Offenders Act 1974 (Exception Order) 1975 (as amended);
- (e) ensure that a suitably trained user of it or its client(s), as the case may be, of it will be responsible for verifying and validating of the identity of each applicant for which the Client requires the Services;
- (f) warrant that it shall be responsible for any submission of incorrect details of applicants;
- (g) be responsible for any payment due to the Supplier in relation to all DBS applications and ID validation checks via the integrated Experian solution (if any), including rejected or invalid applications, made;
- (h) discuss or ensure that its client(s) discusses the content of the disclosure with the applicant before withdrawing any offer of employment;
- (i) be responsible for raising any disputes arising from the information revealed by the DBS check, from the Client, the Client's client(s) and the applicant, to the Supplier and shall not contact the DBS directly;
- (j) in the event of such a dispute, not make a recruitment decision and ensure that the Client's client(s) not make a recruitment decision until the investigation by the DBS is completed and until the Supplier has informed the Client about the outcome of the investigation;
- (k) be solely responsible for its recruitment decision and shall ensure that its client(s) are solely responsible for its client(s)'s recruitment decision following the Services provided by the Supplier;

(l) ensure that Certificate Information is only used by it and its client(s) for the specific purpose for which it was requested and for which the applicant's full consent has been given;

(m) provide and ensures that its client(s) provide a copy of the DBS Code of Practice to the applicant upon request;

(n) be responsible for the correct storage and security of the information revealed in the DBS check and that the information contained is only seen by those that have a right to see it in the course of their normal duties; The Client shall ensure that it and its client(s) comply with the DBS Code of Practice including but not limited the usage, storage and retention of disclosure information;

(o) ensure that no reproductions of the disclosure or its content are made, including photocopies or scanned images, unless with the prior agreement of the Supplier as a result of a stipulated requirement relating to the e- channel service;

(p) comply and ensures that its client(s) comply with the Supplier's written security policy a copy of which shall be made available to the Client upon request;

(q) ensure that it and its client(s) comply with the Supplier's policy on the recruitment of ex-offenders or has its own policy on the recruitment of ex- offenders to which it and its client(s) comply with and shall, upon request provide the Supplier with a copy of this policy;

(r) assist the Supplier with any reasonable request from the DBS for information that will enable it to make a decision on the suitability or continued suitability of registered persons;

(s) assist the Supplier when auditing the Client's accounts in order to establish that the Client and the Client's client(s), as the case may be, complied with the conditions as to verification and validation of the identity of the applicant, as set administratively by the DBS;

(t) comply and ensure its clients comply with the DBS Code of Practice;

(u) manage all queries and respond to any query issued by the Supplier within 2 working days;

(v) ensure access and logins are not shared, and notify the Supplier in writing of any leavers within 3 working days to enable the Supplier to deactivate the relevant account(s); and

(w) ensure all new users undertake the required webinar training prior to granting access or logins;

13. CONFIDENTIALITY

13.1 Either Party agrees not to disclose any confidential information ("Confidential Information"), excluding any confidential information referred to within the End User Agreement which will need to be dealt with in accordance with the End User Agreement (if

applicable), to any third party without the prior written consent of the other Party to the extent that it is necessary for the Party to disclose Confidential Information to its staff and agents. Each Party shall ensure that such staff and agents are subject to the same obligations as the Parties in respect of all Confidential Information.

13.2 Condition 13.1 shall not apply to information which:

13.2.1 Is or becomes public knowledge (otherwise than by breach of these Conditions or a breach of an obligation of confidentiality);

13.2.2 Is in the possession of the other Party, without restriction as to its disclosure, before receiving it from the other Party or any other department or office of Her Majesty's Government;

13.2.3 Is required by law to be disclosed;

13.2.4 Was independently developed by one of the Parties without access to the Confidential Information;

13.2.5 The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract;

13.2.6 Either Party shall not handle or examine any document or thing bearing a government security classification of "Confidential", "Secret" or "Top Secret" other than in a Government establishment and the Parties shall not remove any such document or thing from such Government establishment without the prior written consent of the other Party;

13.2.7 Either Party shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the Contract, unless previously agreed in writing with the other Party;

13.2.8 Except with the prior consent in writing of the other party, neither party shall make use of the Contract or any Confidential Information otherwise than for the purposes of carrying out the Services.

14. DATA PROTECTION

14.1 Each Party shall ensure that any mailing list or customer database supplied to the other Party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998 (as replaced, modified or re-enacted from time to time) and that each Party shall comply with the relevant obligations of the Data Protection Act 1998.

14.2 Any person who becomes a data processor on behalf of the Supplier shall agree to comply with all relevant legislation in force at the appropriate time i.e. the Data Protection

Act 1998 and the Computer Misuse Act 1990 and shall indemnify the Supplier for any actions arising from breach of such legislation.

14.3 The Client shall, in the event that it uses the Identity Authentication Check Services, in addition to 14.1 and 14.2 above, comply with any obligations in relation to Data Protection as referred to in the End User Agreement.

16. AGENCY

16.1 Neither the Client nor its employees shall in any circumstances hold itself or themselves out as being the agent of the Supplier, otherwise than in circumstances expressly permitted by these Conditions.

16.2 Neither the Client nor its employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Supplier, or in any other way to bind the Supplier to the performance, variation, release or discharge of any obligation.

16.3 Neither the Client nor its employees shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

17. INDEMNITY AND INSURANCE

17.1 Neither Party excludes or limits liability to the other Party for death or personal injury.

17.2 Subject always to Condition 17.1, the liability of each Party for Defaults shall be subject to the financial limits set out in this Condition 17.2 as follows:

17.2.1 The aggregate liability for all Defaults for direct loss of or damage to the tangible property of the other shall in no event exceed five million pounds (£5,000,000.00); and

17.2.2 The aggregate liability for all Defaults (excluding any liability governed by Condition 17.2.1) in respect of this Contract shall in no event exceed the Total Value of the Contract;

17.2.3 Subject always to Condition 17.1; in no event shall either Party be liable to the other for indirect or consequential loss or damage, including loss of profits, business revenue or goodwill.

17.2.4 The provision of Conditions 17.2 and 17.3 shall not be taken as limiting the right of either Party to claim from the other Party for:

(a) Additional operational and administrative costs and expenses or bank charges including loss of the Client's data and the consequences of any inaccurate DBS

check which is caused by an act or omission of the Supplier only where to was preventable through validation in the system; and/or

(b) Any costs of expenses rendered nugatory,

resulting from the Default of the other Party.

17.3 The provision of Condition 17.1 and 17.2 shall not apply in respect of any liability either Party suffers as a consequence of:

(a) The infringement of a third party's Intellectual Property Rights;

(b) Fraud or wilful Default by a Party; or

(c) Breach by a Party of:

(i) Any restriction on the disclosure of Confidential Information; or

(ii) The Data Protection Act 1998

both as provided for elsewhere in this Contract.

17.4 The Parties expressly agree that should any limitation or provision contained in this Condition be held to be invalid under any applicable status or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

17.5 For the avoidance of doubt, the Supplier shall not be liable for any false declaration on the application form as long as the same was not made knowingly by the Supplier or one of its employees and as long as the Supplier has complied with all guidance issued by the DBS, including the Code of Practice.

18. INSTRUCTIONS

18.1 Instructions given to the Supplier by the Client's Representative shall be in writing.

18.2 Any oral instruction given to the Supplier shall be confirmed in writing by the Client's Representative as soon as possible thereafter. Provided that if the Supplier shall confirm in writing to the Client's Representative any such oral instructions and such oral instructions and written confirmation thereof by the Supplier is not contradicted in writing by the Client's Representative within fourteen (14) days of receipt thereof by the Client's Representative, the oral instructions shall be deemed to be an instruction in writing by the Client's Representative.

19. INVOICES, PAYMENT AND ACCOUNTS

19.1 The Supplier shall invoice the Client during the month following the month in which it provided the Services by confirming the amount due from the Client.

19.2 Unless stated otherwise, the Client shall pay such an amount as is properly due Within fourteen (14) days of receipt of the invoice by the Supplier. Payment for undisputed invoices not received by the due date may result in the Supplier suspending the Services provided to the Client until all outstanding undisputed sums are settled in full.

19.3 The Supplier shall not be entitled to charge for the provision of any services that are not part of the Services agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 3.

19.4 The charges payable under this agreement are subject to receipt by the Supplier of the Minimum Throughput Amount in each rolling 12 month period of this agreement. If the minimum Throughput amount has not been achieved, the Supplier reserves the right to charge further administrative fees and/or only refund part/none of the balance held on account on behalf of the client. If an account has remained dormant for a period of 12 months or more, we reserve the right to close the account and write off any balances held on account.

19.5 For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of thirty (30) days commencing on the day when the Client receives notification, or if the Supplier had not completed the Services (or the part of the services to which the notification relates) before providing notification, the last day of a period of thirty (30) days commencing on the day when the Supplier completed the Services, (or part of the Services to which the notification relates).

19.6 The Supplier will keep full and proper accounts and records relating to all expenditure reimbursed by the Client and all payments made by the Client in respect of the Services and the System.

19.7 The Supplier will permit the Client acting by its officers, servants and agents or independent auditors on request and at all reasonable times to examine all accounts and records in relation to the provisions of the Services and the Supplier will provide the Client or its independent auditor with such explanations relating to that expenditure as the Client may request.

19.8 The Supplier will ensure that the said accounts and records are available for a period of six years after termination or expiry of the Contract, whichever is the latest.

20. VALUE ADDED TAX

In addition to the sum specified in Condition 19 the Client shall pay to the Supplier such VAT as may be properly chargeable by the Supplier in connection with the provision of the Service. The Supplier shall issue a tax invoice in respect thereof.

21. REPORTS

21.1

In the event that the Client requires the Supplier to produce any reports, other than reports freely downloadable from the System, the Client shall request the same from the Supplier with a full, written specification. Such reports will be subject to an additional charge as notified by the Supplier. For the avoidance of doubt this does not prevent the Client from using the reporting tool to create their own reports.

21.2 All data is archived 6 months after a DBS check result has been received or has been dormant for 6 months. The Supplier will not provide access to an account that has been closed and cannot provide data for checks that have been archived

23. SUSPENSION OF IDENTITY AUTHENTICATION CHECKS

23.1 The Supplier may disable the functionality of Identity Authentication Checks Services in the event that:

23.1.1 its contract with the Identity Authentication Check organisation is terminated prior to the termination of this Contract; or

23.1.2 It has been notified by the Identity Authentication Check organisation of a complaint or that the Client has committed a breach of the End User Agreement and requires for the Authentication Check Services to be disabled;
or

23.1.3 The Client informs the Supplier in writing giving thirty (30) days notice that it does not require the Identity Authentication Checks Services.

24. TERMINATION

24.1

If either party commits a material breach of the Contract, other than a breach of the End User Agreement terms and conditions, which is either not capable of remedy, or if it is capable of remedy, the relevant party fails to remedy such a breach within twenty eight (28) days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other right or remedies of either party in respect of the breach concerned or any other breach of the Contract.

24.2

The Supplier shall be entitled to terminate the Contract with immediate effect if

24.2.1 it appears to it that the Client is unable to adhere to the DBS Code of Practice and/or has not ensured that its client(s) adhere to the DBS Code of Practice; or

25. RECOVERY AND HANDOVER ON END OF CONTRACT

25.1 On termination of the Contract howsoever arising, the Client shall, return to the Supplier all copies of the System or, if requested by the Supplier, shall destroy the same by erasing them from the magnetic media on which they are stored, including any stored on its client(s)'s magnetic media, and certify in writing to the Supplier that

they have been destroyed provided that the Client may extract and store any Client Data upon separate media for continuity purposes.

25.1.1 The Client will be responsible for collecting and removing all Client Data including its client(s)'s data from the System within sixty (60) days of the Contract end date. The System will be available to the administrator for this purpose. All other users of the System site will have their access disabled the day after the Contract end date. The user passwords shall be revoked, preventing connection and sixty one (61) days after the Contract end date all Client Data and its client(s)' data shall be deleted.

25.1.2 When this Contract terminates (for whatever reason), the Client may, for a period of six (6) months thereafter, require the Supplier to use all reasonable endeavours to assist the Client in the transfer of the provision of the Services to either the Client or a third party nominated by the Client and give the Client and/or such third party nominated by the Client such help as may be reasonably necessary to ensure such transfer to take place smoothly. The Supplier may charge for the Services the then current rates, unless otherwise agreed between the Parties.

26. INTELLECTUAL PROPERTY RIGHTS

26.1 Subject to any pre-existing rights of third parties and of the Supplier, the Intellectual Property Rights (other than copyright) in all reports, documents and other materials which are generated or acquired by the Supplier (or any of its sub-contractors or agents) ("the Suppliers Materials") in the performance of the Services shall belong to and be vested automatically in the Supplier and/or the DBS.

26.2 Nothing in this Contract or done under the Contract shall be taken to diminish any Crown copyright, patent rights or any other Intellectual Property Rights which would, apart from this Contract, vest in the Crown or Supplier.

26.3 The Client shall ensure that all royalties licence fees or similar expenses in respect of Intellectual Property Rights in materials used in connection with the Contract have been paid by the Client.

27. ASSIGNMENT AND SUB-CONTRATING

27.1 The Supplier shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Client.

27.2 The Supplier shall be entitled to sub-contract the provision of the Service or any part thereof to any person.

27.3 The Client shall not assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof.

28. NOTICES

Any demand, notice, or other communication required to be given under the Contract shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post to the registered office or last known address of the party to be

served therewith or facsimile or electronic communication and if so sent shall, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or on successful transmission, as the case may be.

29. DISPUTES AND ARBITRATION

29.1 Any dispute arising out of or in connection with this Contract or the performance of the Service shall be notified by the aggrieved Party to the other and the Supplier's Representative and the Client's Representative shall endeavour to resolve any such dispute between them within twenty Working Days or receiving written notification of the same.

29.2 If at the expiration of the twentieth (20th) Working Day period referred to in Condition 29.1 resolution of the dispute has not been reached, either Party may, upon giving prior notice in writing to the other, refer such dispute to an arbitrator.

29.3 Where, pursuant to Condition 29.2 a dispute is to be referred to an arbitrator the arbitrator shall be chosen by agreement between the Parties. If the Parties are unable to agree on the choice of an arbitrator with twenty (20) Working Days of the date of receipt of written notice of the decision to refer the matter to an arbitrator, an arbitrator shall, on the request of either party, be nominated by the President of the Law Society or, in the case of the President's incapacity, by the Vice-President of the Law Society. The award of such arbitrator shall be final and binding upon the parties.

29.4 ARBITRATION RULES

The arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1996.

29.5 PERFORMANCE TO CONTINUE DURING ARBITRATION

Performance of the contract shall continue during arbitration proceedings unless the Supplier's Representative shall order the suspension thereof. No payment due or payable by the Client shall be withheld on account of a pending reference to arbitration.

30. FORCE MAJEURE

30.1 If either Party is affected by a Force Majeure Event it shall immediately notify the other Party in writing of the matters constituting the Force Majeure Event and shall keep that Party fully informed of any relevant changes of circumstances whilst such Force Majeure Event constitutes.

30.2 The Party affected by the Force Majeure Event shall take all reasonable steps available to it to minimise the effects of the Force Majeure Event on the performance of its obligations under the Contract.

30.3 Save as provided in Condition 30.5, a Force Majeure Event shall not entitle either Party to terminate the Contract and neither Party shall be in breach of the Contract, or otherwise liable to the other, by reason of any delay in performance, or non performance of any of its obligations due to a Force Majeure Event.

30.4 If the Party affected by a Force Majeure Event fails to comply with its obligations under Conditions 30.1 or 30.2 above then no relief for the Force Majeure Event, including the provisions of Condition 30.3 above, shall be available to it and the obligations of each Party shall continue in force.

30.5 If a Force Majeure Event results in the suspension of the Services, the Client shall not be obliged to pay the Contract Price until such time as such suspension has ceased. For the avoidance of doubt, this shall not effect any payment obligations in relation to the System.

31. JOINDER

Where a dispute had been referred to arbitration pursuant to Condition 29 (Disputes and Arbitration), and the Client is in a related dispute with a sub-contractor which is substantially the same as the matter referred to arbitration, the parties consent to the joinder of such sub-contractor as a party to the arbitration and to the reference of such related dispute to the arbitrator appointed pursuant to Condition 29 (Disputes and Arbitration) and further agree that the arbitrator shall have power to order the consolidation of such arbitration proceedings and/or to order the holding of concurrent hearings

32. NO AGENCY/EMPLOYMENT/PARTNERSHIP

Nothing in this Contract shall be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the Supplier and the Client and the Client shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Supplier and nor shall the Client hold itself out as having authority to bind the Supplier and shall ensure that staff do not hold themselves out likewise.

33. EXCLUSION OF THIRD PARTY RIGHTS

33.1 Save for as expressly provided within this Contract, no person who is not a party to this Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right to enforce any term of this Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this Condition 33.

33.2 Even if a person who is not a party to this Contract (including any employee, officer, agent, representative or sub-contractor of either party) has the right to enforce any term of this Contract by virtue of Section 1 of the Contracts (Rights of Third Parties) Act 1999, the Parties may, notwithstanding Section 2 of the Contracts (Rights of Third Parties) Act, vary or cancel this Contract by agreement between them without requiring the consent of such third party.

34. COMMUNITY, CULTURAL AND RELIGIOUS CONSIDERATIONS

The Parties shall be aware of the need to observe any community, cultural and religious considerations during the Contract Period.

SCHEDULE 1 – SPECIFICATION

The Online DBS Checks Solution will enable you process basic, standard and enhanced DBS applications through a fully online system which the Supplier will countersign.

The Solution has the following facilities:

- Online DBS disclosure application form
- Setting up applicants' access to online forms for completion of DBS checks.
- Setting up ID verifiers to validate the ID of applicants.
- Recording of applicants ID documentation as required by the DBS.
- Option to use integrated external ID validation solution supplied via Experian when completed (currently in development) and, in the meantime, option to use the Experian stand alone web portal for these checks (if required).
- Production of reports via a report suite.*
- Passwords are created using a password generator ensuring secure random creation.
- Login details are sent to applicant and ID verifiers via e-mail.
- ID verifiers can change their password when logged into the system.
- The system is set up to automatically prompt, via e-mail, both applicants and ID verifiers at relevant stages of the process.
- Reports can be created to identify individuals whose checks are outstanding at various stages *
- Forms can be put on "hold" status which stops the chase e-mails if required*
- The system is set up to enable electronic submission of the online DBS form to the national DBS.
- The system automatically retrieves results and receipts from the DBS every hour for the counter signatory to then see.
- The system is made secure by installing a SSL certificate and setting up https.

* Limitations exist on choices, options and access depending on the level of service agreed

This specification provides high level specification and does not include all details or restrictions of the system. It is designed as guidance to indicate the main functionality of the system.

SCHEDULE 2 –SERVICE LEVEL AGREEMENT
Online DBS Check Service Level Agreement

1. About Online DBS Checks Solution - Managed Service with Administrative Access

We enable you to provide a fast, secure and effective online service to your internal customers, ensuring the most efficient and safe process of your checks. Specifically:

- You set up administrative access for your staff to set-up checks on the system
- You set up and manage ID Verifier and applicant user accounts and access
- Integrated ID validation through Experian.
- You track and manage the application process
- You customise the content of a branded subdomain of the system
- You configure the content and frequency of system-generated emails
- The Supplier will countersign and submit completed checks to the DBS under Eurocom CI Ltd's Registered Body number via secure e-Bulk
- You receive electronic notification of disclosure results with no content

2. Benefits of using Online DBS Checks Managed Service with Administrative Access

- Sophisticated online system to carry out your DBS checks
- Reduced data error as the online form auto-validates information
- No paper application forms to complete and no postage required
- Easily accessible via the web on a PC, laptop or an i-Phone
- Secure logons and clear instructions
- FAQ section
- Automated e-mail reminders for non-completion of forms by applicants and of ID validation by the designated verifier
- E-bulk facility allowing the electronic transfer of your data to the national DBS
- Faster receipt of disclosures
- Experience of working with both public sector and commercial organisations
- Professional, friendly and experienced staff

3. Support – your contacts

Operational support eg eligibility queries and application process

Contact Eurocom CI Team
Telephone 01372 886920
Email info@eurocomci.co.uk

6. Effective Dates

The effective date of this agreement is in your contract

7. Technical Support Service Levels

The following service levels apply during our standard office hours which are 9am – 5.00pm

Full Service Unavailability

Response times – If full service of Online DBS Checks is unavailable we will respond to you the Client, following notification of a fault, within 2 working hours

Fix time – If full service of Online DBS Checks is unavailable we will fix the fault following notification, from you the Client, within 10 working hours

Major Functionality Unavailability

Response times – If major functionality of Online DBS Checks is unavailable we will respond to you the Client, following notification of a fault, within 5 working hours

Fix time – If major functionality of Online DBS Checks is unavailable we will fix the fault, following notification from you the Client, within 20 working hours

Minor Functionality Unavailability

Response times – If minor functionality of Online DBS Checks is unavailable, we will respond to you the Client, following notification of a fault, within 10 working hours.

Fix time – If minor functionality of Online DBS Checks is unavailable we will fix the fault, following notification from you the Client, within 10 working days.

Please note that full service unavailability and major functionality unavailability must be reported via telephone in order for us to meet the SLA timelines. Reporting these via e- mail may result in a delay.

Minor functionality unavailability can be reported either via telephone or via e-mail.

8. Other Guarantees

- To provide an online DBS solution that is accredited by the DBS and MOJ.
- Enable secure administrative access to Online DBS Checks for your staff members allowing you to manage your DBS checks online.
- To electronically submit completed and submitted forms within 1 working day of submission by the ID verifier.
- Secure hosting for the system via an ISO27001 accredited hosting organisation
- To adhere to the DBS Code of Practice at all times.
- To maintain complete confidentiality at all times and adhere to the Data Protection Act 1998
- Allow DBS and MOJ site visits as required.

- Provide an Account Manager to deal with any aspects of the agreement – see contacts section

Your responsibilities

Employmentcheck.org.uk requests that you, the customer, commit to the following:

- To adhere to the DBS Code of Practice at all times
- To maintain complete confidentiality at all times and adhere to the Data Protection Act 1998
- To abide by our Statement of Fair Processing

9. Pricing

The pricing is as agreed in the quotation prior to the set up of the system and acceptance of the terms in the welcome email. Volume discounts are only applicable if the Minimum Throughput volumes are being met on each 12 month rolling basis.

10. Complaints Procedure

Employee Services endeavours to make its service the best that it can be at all times. We also know that sometimes you will want to let us know that you are not happy about something that we have done – or not done. We hope that we can sort these problems out with you to your satisfaction but accept that on occasions this will not be possible.

For this reason, there is a complaints procedure which gives you the chance to tell us when you think something has gone wrong and offers you the assurances that your complaint will be taken seriously. Often you will be able to resolve problems face to face, or by telephone but if you feel that this is not possible then you can put your complaint in writing and send it to:

Telephone 01372 886920
Email info@eurocomci.co.uk

If you are writing, it would be appreciated if you could cover the following points:

- What your complaint is about
- The brief history of the complaint from your point of view
- Your view on what should happen next
- The names of any staff involved

When a complaint is received your Account / Business Manager will:

- Try to put it right
- Respond to your correspondence within five working days

Where we are not able to meet that deadline, perhaps if a response requires further investigation, we will agree a completion date with you.

In all instances your complaint will be looked into by a senior member of staff and that person will contact you. We will also ensure that lessons are learned from what happened and work to prevent it happening again.

SCHEDULE 3 – EXPERIAN DATA SERVICES END USER TERMS

TEMPLATE TERMS; SUBJECT TO CONTRACT

2. END USER AGREEMENT

END USER AGREEMENT RELATING TO EXPERIAN DATA SERVICES WITHIN AN INTEGRATED SERVICE

Background

- A. The End User wishes to have data comprised within the Experian Data Services made available to it and/or used as part of the Authorised Third Party Service.
- B. The Authorised Third Party, as agent for Experian, and the End User have agreed to this subject to the provisions of the attached "Experian Data Services End User Terms" (which shall form part of this Agreement).

TEMPLATE TERMS; SUBJECT TO CONTRACT

EXPERIAN DATA SERVICES END USER TERMS

1. Definitions

1.1 The following words and phrases shall have the following meanings:-

- "The Agreement" means the "End User Agreement relating to Experian Data Services Within an Authorised Third Party Service" between You and Us;
- "Authorised Personnel" means an employee of Your company who You have authorised to access the Experian Data;
- "Confidential Information" means the Experian Data and the provisions of the Agreement;
- "Experian Data" means any of the data forming part of the Experian Data Service;
- "Experian Data Service" means the service known as "Authenticate";
- "Services Provider" or "Authorised Third Party" means Kent County Council as referred to in the contract between You and the Service Provider for In-house services;
- "Term" means unless terminated earlier, the shorter of (i) the term of the contract between the Services Provider and You, or (ii) the term of the agreement between the Service Provider and Us;
- "We" means Experian Limited (and "Us" and "Our" shall be construed accordingly);
- "You" means the End User as identified in the contract between the Service Provider and You (and "Your" shall be construed accordingly).

1.2 Terms defined in the Agreement will have the meanings ascribed to them in the Agreement.

2. Provision of Experian Data

- 2.1 We will provide Experian Data for the Term direct to the Services Provider for it to enable You to use the Experian Data Service as part of the Authorised Third Party Service. You are entitled to request searches during the Term at your discretion which involve Our provision of Experian Data only for Your use. We shall only provide You with Experian Data that You are entitled to receive, depending upon Your purpose of use, as stated on the front of this Agreement.
- 2.2 You will not use any Experian Data for any purpose other than the receipt of the Authorised Third Party Service nor adapt, alter or modify the Experian Data.
- 2.3 You undertake that on each occasion that You wish to use the Services You shall obtain a consent from the relevant individual in the following terms:

"You may undertake a search with Experian for the purposes of verifying my identity. To do so Experian may check the details I supply against any particulars on any database (public or otherwise) to which they have access. They may also use my details in the future to assist other companies for verification purposes. A record of the search will be retained."

If any such consent is not obtained by You, You undertake that You shall not attempt to use the Experian Data Services in respect of the relevant individual.

- 2.4 In order for Us to provide the Experian Data Services to You and in order for Us to comply with the licence terms which British Telecommunications plc and/or other third party suppliers of telephone number data require all users of such data similar to Us to accept, You:
- 2.4.1. Appoint Us as Our agent under this Agreement for the purpose of using Your data to carry out directory enquiry searches for and on behalf of You;
- 2.4.2. Authorise and instruct Us to:
- 2.4.2.1 Use any retrieved telephone numbers resulting from such directory enquiries for the sole purpose of

comparing such telephone numbers against any telephone numbers contained within the relevant and applicable data and producing a score based upon whether there was or was not a match of telephone numbers; and

2.4.2.2. Incorporate the score referred to in Clause 2.4.2.1 into the overall score delivered by the Experian Data Services;

2.4.3. Further instruct and confirm to Us that telephone numbers retrieved from such directory enquiry searches are for use as input into the comparison process described in Clause 2.4.2 only and We are not required to return such telephone numbers to You.

3. Intentionally Left Blank

4. Liability

- 4.1 Your contract for the Authorised Third Party Services is between you and the Services Provider. Subject to Clause 4.2 below, We shall not have any liability to You arising out of or in respect of Your use of the Experian Data. Without prejudice to the foregoing, We shall not have any liability to you for any indirect or consequential loss.
- 4.2 Nothing in these End User Terms shall limit or exclude Our liability to You for death or personal injury caused by Our negligence, or the negligence of our servants or agents.

5. Compliance

- 5.1 Each of us shall in connection with the provision or use of the Experian Data (as appropriate) comply with all legislation, regulations and other rules having equivalent force which are applicable to each of us, including the Data Protection Act 1998 ("DPA"), and the Representation of the People Act 2000 and any regulations made thereunder (including the Representation of the People Regulations 2002) as amended from time to time ("ROPA Laws").
- 5.2 You will permit only expressly Authorised Personnel to have access to the Experian Data.
- 5.3 You will use the Experian Data Services in accordance with any guidance that the Services Provider issues to You.
- 5.4 If requested by Us, You agree to provide written evidence to Us evidencing the validity of Your search requests and Your compliance with the Data Protection Act 1998 in respect of each search.

6. Confidentiality

- 6.1 You will keep the Confidential Information strictly confidential and not disclose any part of the same to any person except as permitted by or required for the purposes of the receipt of the Integrated Services.
- 6.2 The provisions of Clause 6.1 above do not apply to any information to the extent it is or comes within the public domain, or is required to be disclosed by law, court order or government.
- 6.3 For the purposes of the Freedom of Information Act 2000 ("FOIA") We believe that disclosure of the Confidential Information would prejudice our commercial interests, and would be in breach of confidence, and that the Confidential Information constitutes a trade secret. You will inform Us as soon as reasonably practical of any request for disclosure made to You under the FOIA in respect of the Confidential Information.

7. General

- 7.1 The copyright, database rights and all other intellectual property rights in the Experian Data will remain vested in Us (or Our third party licensors).
- 7.2 The provisions of these End User Terms will remain in force until either (i) the Service Provider's agreement with Experian is terminated or (ii) termination of this End User Agreement, whichever is the earliest. However, We may terminate Your entitlement to have the Experian Data used as part of the Authorised Third Party Services on written notice to You and the Service Provider if You

TEMPLATE TERMS; SUBJECT TO CONTRACT

commit a material breach of any of these End User Terms which is not remedied within 28 days after receipt of a notice from Us specifying the breach, requiring its remedy and making clear that failure to remedy may result in such termination.

- 7.3 If any part of these End User Terms is found to be invalid or unenforceable by any Court or other competent body such invalidity or unenforceability shall not affect the other provisions of these End User Terms and such other provisions shall remain in full force and effect.
- 7.4 If either of us fails to exercise a right or remedy which arises in relation to these End User Terms, such failure shall not prevent the exercise of that right or remedy subsequently in respect of that or any other incident.
- 7.5 A waiver of any breach of these End User Terms shall only be effective if it is made in writing and signed on behalf of the party who is waiving the breach or provisions. Any waiver of a breach of any terms of these End User Terms shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other of these End User Terms.
- 7.6 Nothing in this Agreement shall be construed as creating a right which is enforceable by any person who is not a party to this Agreement.
- 7.7 These End User Terms and all matters arising out of them shall be governed by, and construed in accordance with the Laws of England. The English Courts shall have exclusive jurisdiction over any claim or matter which may arise out of or in connection with these End User Terms.

* END OF END USER AGREEMENT *