

**Dated [INSERT DATE]**

**E-BULK DEED**

**Between**

**THE DISCLOSURE AND BARRING SERVICE**

**and**

**[INSERT NAME OF e-RB]**

This E-Bulk Deed is made on [INSERT DATE (*being the date of the last of the Parties to sign this deed)*]

Between:

(1) The Disclosure and Barring Service of 10 Shannon Court, Princes Parade, Princes Dock, Liverpool L3 1QY (“**DBS**”); and

(2) [INSERT NAME OF E-RB], [a [company] [limited liability partnership] [charitable incorporated organisation] registered in [England and Wales] under [company] number [INSERT NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] [of [INSERT ADDRESS OF SOLE TRADER] (“**the** **e-RB**”),

each a “**Party**” and together the “**Parties**”.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this E-Bulk Deed, the following words and phrases have the meanings given below, unless the context otherwise requires:

**"Applicant"** means a person making an application for a disclosure certificate (or certificates) (or on whose behalf such an application is being made);

“**CEDR**” means the Centre for Effective Dispute Resolution;

“**CEDR Model Mediation Procedure**” means the procedure prescribed by CEDR that is referred to in Clause 10.5 of this E-Bulk Deed, as the same may be updated from time to time;

**“Conditions of Registration”** means the conditions of registration applicable to a Registered Body’s registered status as set out in The Police Act 1997 (Criminal Records) (Registration) Regulations 2006;

“**Confidential Information**” means any information, however it is conveyed, whether before or after the execution of this E-Bulk Deed, that relates to the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how, personnel and suppliers of the Parties, together with all information derived from the above, and any other information clearly designated as being confidential or equivalent (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

“**Data Protection Laws**” means 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 the electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party;

**“DBS Code of Practice”** means the code of practice for registered persons and other recipients of disclosure information issued by DBS (pursuant to section 122 of the Police Act 1997) from time to time, the current version of which can be found at <https://www.gov.uk/government/publications/dbs-code-of-practice>;

“**Default**” means any breach by the relevant Party of any of its obligations in this E-Bulk Deed or any other default, act, omission, negligence, breach of statutory duty or statement of the relevant Party and/or its employees, servants, agents or Subcontractors in connection with or in relation to the subject-matter of this E-Bulk Deed and in respect of which such Party is liable to the other;

“**Dispute**” means any dispute, difference or question of interpretation arising out of and/or in connection with this E-Bulk Deed;

“**Dispute Resolution Procedure**” means the dispute resolution procedure set out in Clauses 10.3 to 10.5 (inclusive);

**“E-Bulk Application”** means an application for a disclosure certificate (or certificates) made to DBS by the e-RB via the E-Bulk Service;

“**E-Bulk Deed**” means this deed, comprised of the terms set out herein;

“**E-Bulk Service**” means the services provided by DBS to the e-RB, subject to the terms of this E-Bulk Deed, for the provision of DBS’ e-bulk system; allowing the e-RB to submit multiple applications for disclosure certificates to DBS and for the results to be received electronically by the e-RB, as more particularly described in the Interchange Agreement;

“**Effective Date**” means the date on which the last of the Parties to sign this E-Bulk Deed so signs in accordance with its terms, on which date this E-Bulk Deed shall be deemed to be delivered;

**"EIR"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such regulations;

“**Escalation Procedure**” means the escalation procedure described in Clause 10.2;

**“First Line Support”** means the DBS team that is responsible for, amongst other things, escalating Technical Issues on behalf of the e-RB and other customers of DBS;

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;

“**Force Majeure Event**” means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of the Crown, government (except acts of DBS), local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute involving employees of the e-RB;

“**Interchange Agreement**” means DBS’ Interchange Agreement Version 9.0 dated 10 February 2017, as may be updated by DBS from time to time without notice to the e-RB;

“**Neutral Advisor**” means an independent third party who determines the categorisation of a Dispute as set out in Clause 10.3.4;

**“Registered Body”** means an organisation that is registered with DBS to submit “Standard”, “Enhanced” and “Enhanced with Barred Lists” DBS checks, and is entitled by law to ask an individual to reveal their full criminal history (also known as asking an exempted question);

**"Request for Information"** means a request for information under the FOIA or the EIR;

“**Subcontractors**” means the subcontractors of the e-RB or DBS. The term **"Subcontract"** shall be construed accordingly;

**“Technical Issue”** has the meaning given to it in Clause 10.1.2;

“**UK Data Protection Legislation**” means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

“**Working Day**” means Monday to Friday (inclusive) and excludes statutory bank holidays in England and Wales.

General

As used in this E-Bulk Deed:

references to any one gender do not exclude other genders; and

the singular includes the plural and vice versa.

A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

General references to a “person” shall be understood to include (as applicable), a natural person, a company, a partnership and an unincorporated association (in each case whether or not having separate legal personality).

The words "including", "include", "for example", "in particular" and words of similar effect shall be construed so that they do not limit the general effect of the words which precede them, and so that any examples that are given are not to be exclusive or limiting examples of the matters in question.

The Parties shall comply with any express obligation in this E-Bulk Deed to comply with any document, statute, enactment, order, regulation or other similar instrument that is referenced in this E-Bulk Deed.

Headings are included in this E-Bulk Deed for ease of reference only and shall not affect the interpretation or construction of this E-Bulk Deed.

References to Clauses are, unless otherwise provided, references to clauses of this E-Bulk Deed.

Except as otherwise expressly provided in this E-Bulk Deed, all remedies available to each Party under this E-Bulk Deed are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

The e-RB agrees that it will use its best endeavours to mitigate any losses which it suffers in connection with this E-Bulk Deed.

Each Party shall remain responsible for all acts and omissions of its Subcontractors and all acts and omissions of those employed or engaged by its Subcontractors as if they were its own.

A reference to writing or written includes email but excludes fax (unless expressly stated to the contrary within the relevant provision).

An obligation on a party not to do something includes an obligation not to allow that thing to be done.

1. DURATION OF the E-BULK DEED

This E-Bulk Deed shall come into force on the Effective Date and, unless terminated earlier in accordance with Clause 11 of this E-Bulk Deed, shall automatically terminate if the e-RB is de-registered from the E-Bulk Service or ceases to be a Registered Body, whichever occurs first.

1. General Obligations

The Parties shall abide by the terms of the Interchange Agreement which defines the responsibilities and requirements of the Parties with respect to the exchange of information over the E-Bulk Service.

DBS reserves the right in its sole discretion to amend the Interchange Agreement from time to time. Any such amendments will be communicated to the e-RB and where requested by the e-RB, the e-RB will be given a reasonable opportunity (determined by DBS in its sole discretion) to reconfigure its systems, policies and/or procedures before it will be classed as being in breach of any such amended Interchange Agreement.

The e-RB acknowledges and agrees that, as a Registered Body, it is required to, and shall, comply with the DBS Code of Practice and the Conditions of Registration. The e-RB further acknowledges and agrees that failure to comply with the Conditions of Registration can result in the suspension or cancellation of its registration as a Registered Body.

The e-RB shall also comply with:

any and all obligations on the e-RB in the e-Bulk non-technical document suite which can be found on [https://www.gov.uk/government/publications/dbs-e-bulk-non-technical-documents](https://www.gov.uk/government/publications/dbs-e-bulk-non-technical-documents%20); and

any and all obligations on the e-RB in the e-Bulk technical document suite, which can be found on <https://www.gov.uk/government/publications/dbs-e-bulk-technical-documents>,

together with any other documents that impose obligations on e-RBs that DBS may publish on such web pages from time to time.

Should DBS ask the e-RB to complete a “Compliance Questionnaire for e-Bulk Registered Bodies”, the e-RB shall populate such questionnaire and return it to DBS within the timescales referenced in the communication from DBS requesting its completion.

Each Party shall bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and implementation of this E-Bulk Deed.

The e-RB shall comply with all applicable Data Protection Laws in the collection and transfer of personal data to DBS and shall ensure that all necessary consents and permissions required by the Data Protection Laws to permit DBS to provide the E-Bulk Service have been obtained.

The e-RB is responsible for the accuracy of all data (including personal data) that it provides to DBS in connection with the E-Bulk Service. The e-RB acknowledges and agrees that it shall be responsible under the Data Protection Laws in the event that there is an unauthorised disclosure of Applicant personal data as a result of the e-RB’s breach of this Clause 3.8.

1. REPRESENTATIVES

The person nominated by the e-RB as being responsible for the receipt of integrity keys (as per section 2.2.2 of the Interchange Agreement) is:

[Relevant e-RB representative details to be inserted prior to signature]

The person nominated by the e-RB as being responsible for all aspects of key management and key accounting (as per section 2.2.2 of the Interchange Agreement) is:

[Relevant e-RB representative details to be inserted prior to signature]

1. CONFIDENTIALITY AND FREEDOM OF INFORMATION

The Parties shall:

keep the other Party’s Confidential Information strictly confidential and shall not copy, record, use or disclose it other than for the purposes of the proper performance of, or to exercise its rights under, this E-Bulk Deed, without the prior written consent of the disclosing Party;

not disclose the other Party’s Confidential Information to any person without the other Party’s prior written consent; and

only use such Confidential Information in connection with this E-Bulk Deed and/or in connection with the provision of the E-Bulk Service.

Clause 5.1 shall not apply to the extent that:

disclosure is required by law, governmental or regulatory authority and/or any court or other authority of competent jurisdiction;

such information was in the lawful possession of the receiving Party without obligation of confidentiality prior to its disclosure by the disclosing Party;

such information was lawfully obtained from a third party without obligation of confidentiality;

such information was already in the public domain at the time of the disclosure otherwise than by breach of this E-Bulk Deed; or

such information was independently developed without access to the other Party’s Confidential Information.

Each Party may only disclose the other Party’s Confidential Information to its employees, agents, consultants and Subcontractors who are involved in the provision of the E-Bulk Service, on a need-to-know basis, and shall ensure that such persons are subject to confidentiality obligations no less onerous than those contained in this E-Bulk Deed. The e-RB shall be fully liable for any breach of confidentiality caused by its employees, agents, consultants and Subcontractors.

The receiving Party shall not, and shall procure that its employees, agents, consultants and Subcontractors shall not, use the disclosing Party’s Confidential Information in any way other than is strictly necessary for the proper performance of (a) the receiving Party’s obligations under this E-Bulk Deed and/or (b) the E-Bulk Service.

Neither Party shall make, nor permit any person to make, any public announcement concerning this E-Bulk Deed without the prior written consent of the other (such consent not to be unreasonably withheld). Notwithstanding the foregoing provisions of this Clause 5.5, DBS recognises the value of this E-Bulk Deed to the e-RB in promoting its e-Bulk interface, however any promotional material/activity in connection with the E-Bulk Service making specific reference to DBS must be sent to and be approved by DBS before use, such approval not to be unreasonably withheld or delayed.

Nothing in this Clause 5 shall prevent either Party from using data processing techniques, ideas and know-how gained during the performance of this E-Bulk Deed in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or the infringement of any intellectual property rights.

If (and only to the extent that) the disclosing Party's Confidential Information is no longer required by the receiving Party during the term of this E-Bulk Deed for the purposes of the proper performance of, or to exercise its rights under, this E-Bulk Deed, and upon the termination of this E-Bulk Deed, the receiving Party shall (and shall ensure that its employees, agents, consultants and Subcontractors shall) either promptly return the Confidential Information of the disclosing Party which is in its control, power or possession to the disclosing Party or (at the disclosing Party's option) shall promptly destroy it and certify to the disclosing Party that it has done the same.

The Parties acknowledge and agree that damages alone may not be an adequate remedy for any breach, or threatened breach, of the confidentiality obligations in this Clause 5 and that the disclosing Party (who has suffered as a result of a breach by the other Party) shall be entitled to the remedies of injunction, specific performance and other equitable relief.

The e-RB acknowledges that DBS is subject to the requirements of the FOIA and the EIR. The e-RB shall:

where DBS receives a Request for Information related to this E-Bulk Deed, provide all necessary assistance and cooperation as reasonably requested by DBS to enable DBS to comply with its obligations under the FOIA and the EIR;

provide DBS with a copy of all information that may be held on behalf of DBS requested in any Request for Information which is in its possession or control in the form that DBS requires within five (5) Working Days (or such other period as DBS may reasonably specify) of DBS’ request for such information; and

transfer to DBS all Requests for Information relating to this E-Bulk Deed and/or the E-Bulk Service that it receives as soon as practicable and in any event within two (2) Working Days of receiving the Request for Information.

The e-RB acknowledges that DBS may be required under the FOIA and EIR to disclose information (including information which may be regarded as sensitive or confidential) without consulting or obtaining consent from any other party. DBS shall take reasonable steps to notify the relevant parties of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this E-Bulk Deed) DBS shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIR.

In no event shall the e-RB respond directly to a Request for Information relating to this E-Bulk Deed and/or the E-Bulk Service unless expressly authorised to do so by DBS.

1. RIGHT OF AUDIT
   1. The e-RB shall grant to DBS, any statutory auditors of DBS and their respective agents the right of reasonable access to the e-RB’s records and/or any sites used by the e-RB in connection with the E-Bulk Service. The e-RB shall use all reasonable endeavours to secure similar access to the records and/or sites of any Subcontractors used in connection with the E-Bulk Services. The e-RB shall provide all reasonable assistance at any time for the purposes of carrying out an audit of the e-RB’s compliance with the provisions of this E-Bulk Deed and all activities performed under and in connection with this E-Bulk Deed and the Interchange Agreement.
2. Warranties

The e-RB warrants and represents that:

it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this E-Bulk Deed and that this E-Bulk Deed is validly executed by a duly authorised representative of the e-RB;

its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 7) in accordance with its own established internal procedures; and

the information supplied by it to DBS for the purposes of the E-Bulk Service is accurate and not misleading and the e-RB has obtained all necessary consents from the Applicants in accordance with the Data Protection Laws.

DBS warrants that:

* + 1. it has full capacity and authority and all necessary consents to enter into and to perform this E-Bulk Deed and that this E-Bulk Deed is validly executed by a duly authorised representative of DBS; and
    2. its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause 7.2) in accordance with its own established internal procedures.

1. INDEMNITY
   1. Without prejudice to any rights or remedies of DBS, the e-RB agrees to indemnify DBS on demand against all actions, demands, losses, expenses and costs (including legal fees) which DBS may suffer or incur as a result of or in connection with any Default(s) caused by the e-RB including but not limited to any losses suffered as a result of the e-RB deliberately submitting an incorrect E-Bulk Application.
2. Limitation of Liability

No Party shall exclude or limit its liability for:

death or personal injury caused by its negligence or that of its employees, agents and Subcontractors; or

fraud.

Subject to Clauses 8.1 and 9.1 (the liability in relation to which shall be unlimited), the maximum aggregate liability of either Party to the other for all claims whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise arising out of or in connection with this E-Bulk Deed shall be limited to £100,000.

Subject to Clause 9.1 and 9.4, and except in respect of any liability arising under or in connection with Clause 5, in no event shall any Party be liable to any other Party for:

any indirect, special or consequential loss or damage; and/or

any loss of profits, turnover, business opportunities, anticipated savings or damage to goodwill (whether direct or indirect); and/or

any loss of data.

Subject always to Clause 9.2, the following types of losses are deemed to be a non-exhaustive list of direct and recoverable losses under this E-Bulk Deed:

the right of one Party to claim from the other Party for additional operational and administrative costs and expenses; and/or

any wasted expenditure or charges rendered unnecessary and/or incurred by one Party arising from the other Party’s Default,

provided that the claiming party shall use all reasonable endeavours to avoid and/or mitigate such costs or expenses.

1. ESCALATION PROCEDURE and DISPUTE RESOLUTION PROCEDURE

General

Unless otherwise agreed by the Parties in writing, work and activity to be carried out under this E-Bulk Deed shall not cease or be delayed by the Escalation Procedure and/or the Dispute Resolution Procedure.

The Escalation Procedure shall be used by the Parties when a technical issue relating to the way in which the E-Bulk Service operates arises (**“Technical Issue”**).

The Parties acknowledge and agree that the Dispute Resolution Procedure shall be the mechanism through which the Parties shall seek to resolve Disputes between the Parties.

Escalation Procedure

Should the e-RB encounter a Technical Issue, its authorised technical representative shall notify First Line Support of that Technical Issue as soon as reasonably practicable (providing as much information about the Technical Issue as possible).

First Line Support shall then escalate the Technical Issue to the relevant team(s) within DBS (which may include DBS’ external IT suppliers) for resolution. Those team(s) may need to engage with the e-RB in order to resolve the issue and, accordingly, the e-RB agrees that it shall provide such information and assistance as may be reasonably required to enable DBS to resolve the Technical Issue.

Dispute Resolution Procedure

If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

In the event that the Parties cannot resolve a Dispute through the meeting referred to in Clause 10.3.1:

* + - 1. if it is a technical Dispute, it shall be resolved using the expert process set out in Clause 10.4; and
      2. all other Disputes shall be subject to mediation according to Clause 10.5.

For the purposes of this Clause 10.3 in interpreting which procedure applies, a “technical Dispute” is one where the Dispute is based on a difference of opinion on matters of technology, or defined standards or procedures related to the deployment of technology.

Neutral Advisor

* + - 1. In the event that the Parties cannot agree on the categorisation of a specific Dispute in accordance with Clause 10.3.1 above, the categorisation of the Dispute shall be referred to a Neutral Advisor.
      2. The Neutral Advisor shall be selected by the agreement of the Parties. In the event that the Parties do not reach agreement on the selection of the Neutral Advisor within five (5) Working Days after a request by either Party to the other that a Neutral Advisor be selected, then the Party may request the President for the time being of the Chartered Institute of Arbitrators to select as promptly as is practicable a suitably qualified and experienced Neutral Advisor for purposes of categorising the Dispute.
      3. Five (5) Working Days after the Neutral Advisor has accepted the appointment each Party shall submit a written report on the Dispute to the Neutral Advisor with a copy being sent to the other Disputing Party. Unless agreed otherwise between the Parties in writing, the report shall be not more than 10 pages in length and shall only be supported by such evidence as is necessary.
      4. The Neutral Advisor shall be instructed to deliver his determination on the categorisation of the Dispute to the Parties within five (5) Working Days (or such other period as may be agreed between the Parties in writing) after the submission of the written reports pursuant to 10.3.4.3.
      5. Decisions of the Neutral Advisor shall be final and binding and not subject to appeal.
      6. The fees of the Neutral Advisor shall be borne equally by the Parties or in the proportion as shall be determined by the Neutral Advisor having regard (amongst other things) to the conduct of the Parties.

Expert process

The Parties hereby agree that referral to the expert process shall involve referral for final determination. The "Expert" shall be deemed to act as expert and not as arbitrator.

The Expert shall be selected by mutual agreement between the Parties. In the event that the Parties are unable to agree on an Expert within ten (10) Working Days after a request by one Party to the other that an Expert be appointed, then either Party may apply to the President for the time being of the Institution of Arbitrators to choose a suitably qualified and experienced Expert for the Dispute in question.

Within ten (10) Working Days of the Expert accepting the appointment the Parties shall each submit a written report on the Dispute to the Expert with a copy being sent to each other, and five (5) Working Days thereafter shall submit in writing any comments they wish to make on the other’s report to the Expert and to each other. Unless agreed otherwise between the Parties in writing, the report shall be not more than 20 pages in length and shall only be supported by such evidence as is necessary.

Each Party shall then afford the Expert all necessary assistance which the Expert requires to consider the Dispute including but not limited to full access to any documentation or correspondence relating to the obligations of each Party under this E-Bulk Deed.

The Expert shall be instructed to deliver his determination to the Parties within ten (10) Working Days or such other reasonable period as the Parties shall agree in writing after the submission of the written reports and comments pursuant to Clause 10.4.3.

Decisions of the Expert shall be final and binding and not subject to appeal other than in a case of fraud or manifest error.

The Expert shall have the same powers as an arbitrator to require either Party to produce any documents or information to him and the other Party and each Party shall, in any event, supply to the Expert such information which it has and is material to the matter to be resolved and which it could be required to produce on disclosure under Civil Procedure Rules.

The fees of the Expert shall be borne equally by the Parties or in the proportion as shall be determined by the Expert having regard (amongst other things) to the conduct of the Parties.

Mediation

Unless otherwise agreed between the Parties in writing, the Mediation shall follow the CEDR Model Mediation Procedure, including all optional or additional wording contained therein. In the context of each Dispute, if relevant, any agreement between the Parties to modify the CEDR Model Mediation Procedure, or to adopt any other procedure, shall be agreed in writing.

Unless concluded with a written legally binding agreement, all discussions connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

If the Parties accept the mediator’s recommendations or otherwise reach agreement on the resolution of the Dispute, such agreement shall be reduced to writing and, once it is signed by each Party, shall be binding on the Parties.

In the event that the Parties fail to agree the resolution of the Dispute at the end of the mediation, either Party may then invoke the legal proceedings to seek determination of the Dispute.

* 1. Claims

Neither Party shall bring court proceedings against the other Party (“**Defending Party**”) in respect of any alleged failure of the Defending Party to perform its obligations under this E-Bulk Deed where:

another party has already brought court proceedings against the Defending Party in respect of such failure and such court proceedings are based on the same set of facts and arise out of the same legal cause of action;

a court has issued final judgment in favour of the Defending Party; and

the Party (being the first Party referred to in Clause 10.6.1) was informed in writing of the commencement of the court proceedings and had an opportunity to join as a party to such proceedings.

* 1. Confidentiality of documentation

All documentation disclosed to either Party or any third party pursuant to Clauses 10.3 to 10.6 (inclusive) shall be Confidential Information for all purposes.

1. TERMINATION AND CONSEQUENCES OF TERMINATION

Without prejudice to any other rights or remedies that it may have, DBS reserves the right, at any time and for any reason whatsoever, in its sole discretion, to temporarily or permanently disable the e-RB from using the E-Bulk Service and require that all applications are submitted on a paper Disclosure Application Form. Any such decision shall be communicated by DBS to the e-RB in writing. In the event that DBS permanently disables the e-RB from using the E-Bulk Service, this E-Bulk Deed shall automatically terminate.

This E-Bulk Deed shall automatically terminate in the circumstances referred to in Clause 2 of this E-Bulk Deed.

Except as expressly provided in this E-Bulk Deed, termination of this E-Bulk Deed shall be without prejudice to any accrued rights and obligations of the Parties under this E-Bulk Deed.

In the event that the e-RB ceases to use or is disabled from using the E-Bulk Service (pursuant to clause 11.1 or otherwise) and/or in the event that this E-Bulk Deed terminates:

the Parties shall (unless DBS determines otherwise (acting reasonably)), continue to process any such applications that have been committed to as at the point of cessation/disablement either by means of the arrangements currently in place between the Parties at that time or by such other means as the Parties shall discuss and agree in writing;

the e-RB must (unless otherwise agreed in writing with DBS) immediately cease all access to and use of the E-Bulk Service platform;

the e-RB must cease to hold itself out as offering E-Bulk Applications to its customers; and

the Parties shall comply with their obligations set out in Clause 5.7.

1. general provisions

Force Majeure

Subject to the remaining provisions of this Clause 12.1, either Party to this E-Bulk Deed may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

The affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

The affected Party shall give the other Party written notice of the Force Majeure Event as soon as reasonably practicable following its occurrence. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the affected Party, and any action the affected Party proposes to take to mitigate its effect.

As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this E-Bulk Deed. The Parties shall take all reasonable steps to overcome or minimise the consequences of the Force Majeure Event.

The affected Party shall notify the other Party as soon as reasonably practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this E-Bulk Deed. Following such notification, this E-Bulk Deed shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.

* 1. Assignment and Subcontracting

Neither Party shall assign, novate, transfer, sub-license or declare a trust in respect of its rights under all or a part of this E-Bulk Deed or the benefit or advantage hereof without the prior written consent of the other Party.

Neither Party shall subcontract any of its obligations under this E-Bulk Deed without first obtaining the other Party’s written approval.

* 1. Notices

Any notice or other communication to be given in connection with this E-Bulk Deed shall be deemed to have been properly delivered if sent by recorded or registered post or by email and shall be deemed for the purposes of this E-Bulk Deed to have been given or made:

for the purposes of notices or communications sent by post: at the time recorded by the delivery service, provided that delivery is between 9.00 am and 5.00 pm on a Working Day. Otherwise, delivery will occur at 9.00 am on the same Working Day (if delivery is before 9.00 am) or on the next Working Day (if delivery is after 5.00 pm); and

for the purposes of notices or communications sent by email: 9.00 am on the first Working Day after sending.

For the purposes of this Clause 12.3 the address for notices for each of the Parties shall be as follows:

e-RB: Notices by post: [\*\*\*\*\*]. Notices by email: [\*\*\*\*\*].

DBS: Notices by post: DBS Commercial, Shannon Court, 10 Princes Parade, Princes Dock, Liverpool L3 1QY. Notices by email: DBSCommercial@dbs.gov.uk.

* 1. Entire Agreement

Subject to Clause 12.4.2, this E-Bulk Deed constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the Parties, whether oral or written, in relation to such subject matter.

Nothing in this E-Bulk Deed shall exclude or limit the liability of any Party in respect of fraudulent concealment or fraudulent misrepresentation.

* 1. Rights of Third Parties

A person who is not a party to this E-Bulk Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”) to enforce any term of this E-Bulk Deed. This Clause 12.5.1 will not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the CRTPA.

* 1. Severability

If any Clause, or part of a Clause, of this E-Bulk Deed, is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to the E-Bulk Deed as a whole, the legality, validity or enforceability of the remainder of this E-Bulk Deed (including the remainder of the Clause which contains the relevant provision) shall not be affected.

* 1. Variation

No variation of this E-Bulk Deed shall be valid unless it is made in writing and signed by the Parties.

* 1. No waiver

The failure to exercise, or delay in exercising, a right, power or remedy provided by this E-Bulk Deed or by law shall not constitute a waiver of that right, power or remedy. If either Party waives (in writing) a breach of any provision of this E-Bulk Deed this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

* 1. Governing Law and Jurisdiction

This E-Bulk Deed is governed by the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

[**For use where the e-RB is a company**]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Executed as adeed by [**name of COMPANY**] by a director in the presence of a witness: | |  | Signature |  |
|  | |  |  |  |
|  | |  | Name (block capitals) |  |
|  | |  |  | **Director** |
|  | |  |  |  |
| Witness signature |  | |  | |
|  |  | |  | |
| Witness name |  | |  | |
| (block capitals) |  | |  | |
|  |  | |  | |
| Witness address |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  |  |  |  |

[**For use where the e-RB is an LLP – option one – by one member in the presence of a witness**]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Executed as adeed by [**name of LLP**] by a member in the presence of a witness: | | )))) | Signature |  |
|  | |  |  |  |
|  | |  | Name (block capitals) |  |
|  | |  |  | **Member** |
|  | |  |  |  |
| Witness signature |  | |  | |
|  |  | |  | |
| Witness name |  | |  | |
| (block capitals) |  | |  | |
|  |  | |  | |
| Witness address |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |

[**For use where the e-RB is an LLP – option two – by two members**]

|  |  |  |  |
| --- | --- | --- | --- |
| Executed as a deed by [**name of LLP**]: | ))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Member** |
|  |  |  |  |
|  |  | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Member** |

[**For use where the e-RB is a partnership (not an LLP)**]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signed as a deed by [**name of partnership**] through its agent [**name of partner**] [under a power of attorney dated [\*\*\*\*\*] in the presence of a witness: | | ))))) | Signature |  |
|  | |  |  | **Partner as agent for [NAME OF PARTNERSHIP]** |
| Witness signature |  | |  | |
|  |  | |  | |
| Witness name |  | |  | |
| (block capitals) |  | |  | |
|  |  | |  | |
| Witness address |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |

[**For use where the e-RB is an individual**]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signed as adeed by [**full name of individual**] in the presence of a witness: | | )))) | Signature |  |
|  | |  |  |  |
| Witness signature |  | |  | |
|  |  | |  | |
| Witness name |  | |  | |
| (block capitals) |  | |  | |
|  |  | |  | |
| Witness address |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |

[**For use when the e-RB is a charitable incorporated organisation (CIO) acting by two charity trustees**]

|  |  |  |  |
| --- | --- | --- | --- |
| Executed as a deed by [**NAME OF EXECUTING CIO, including the words "Charitable Incorporated Organisation"**] acting by [**NAME OF FIRST CHARITY TRUSTEE SIGNING**] and [**NAME OF SECOND CHARITY TRUSTEE SIGNING**], two of its charity trustees: | ))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Charity Trustee** |
|  |  |  |  |
|  |  | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Charity Trustee** |

[**For use when the e-RB is a charitable incorporated organisation (CIO) acting by its sole charity trustee**]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Executed as a deed by [**NAME OF EXECUTING CIO, including the words "Charitable Incorporated Organisation"**] acting by its sole charity trustee, [**NAME OF THE CHARITY TRUSTEE SIGNING**], in the presence of a witness: | | ))))) | Signature |  |
|  | |  |  | **Charity Trustee** |
| Witness signature |  | |  | |
|  |  | |  | |
| Witness name |  | |  | |
| (block capitals) |  | |  | |
|  |  | |  | |
| Witness address |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |
|  |  | |  | |

|  |  |  |  |
| --- | --- | --- | --- |
| Executed as a deed by **THE DISCLOSURE AND BARRING SERVICE**: | ))) | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Authorised Signatory** |
|  |  |  |  |
|  |  | Signature |  |
|  |  |  |  |
|  |  | Name (block capitals) |  |
|  |  |  | **Authorised Signatory** |