**Dated**

**MEMORANDUM OF UNDERSTANDING**

**Between**

**THE DISCLOSURE AND BARRING SERVICE**

**and**

This Memorandum of Understanding is made on [ ]

Between:

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

(2) [ ] of [ ] (“the **e-RB**”),

together, (the “**Parties**”).

This Memorandum of Understanding is a non-binding agreement but it is intended to be a clear statement of the respective rights and responsibilities of the Parties.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

As used in this Memorandum of Understanding, the expressions below shall have the following meanings, unless the context otherwise requires:

“CEDR” means the Centre for Effective Dispute Resolution;

“CEDR Model Mediation Procedure” means the procedure referred to in Paragraph 10.5 of this Memorandum of Understanding;

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

“Memorandum of Understanding” means this agreement, comprised of the Clauses hereto;

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Subcontractors in connection with or in relation to the subject-matter of this Memorandum of Understanding and in respect of which such Party is liable to the other;

“Dispute” means any dispute, difference or question of interpretation arising out of this Memorandum of Understanding;

“Dispute Resolution Procedure” means the dispute resolution procedure described in Clause 10;

“Effective Date” means the date of this Memorandum of Understanding;

“Escalation Procedure” means the escalation procedure described in Clause 10;

“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 government (except acts of the DBS), local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute involving employees of the respective Party;

“Issue” means any disagreement between the Parties;

“Neutral Advisor” means an independent third Party who determines the categorisation of a Dispute as set out in Clause 10.3.3;

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

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

General

As used in this Memorandum of Understanding:

the masculine includes the feminine and the neuter; 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.

The Parties shall comply with any express obligation in this Memorandum of Understanding to comply with any document, statute, enactment, order, regulation or other similar instrument that is referenced in this Memorandum of Understanding.

Headings are included in this Memorandum of Understanding for ease of reference only and shall not affect the interpretation or construction of this Memorandum of Understanding.

References to Clauses are, unless otherwise provided, references to clauses of this Memorandum of Understanding.

Except as otherwise expressly provided in this Memorandum of Understanding, all remedies available to each Party under this Memorandum of Understanding 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.

Each Party agrees that it will take reasonable steps to mitigate any losses which it suffers in connection with this Memorandum of Understanding.

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.

1. DURATION OF the MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding shall come into force on the Effective Date and shall automatically terminate if the e-RB is de-registered from the e-Bulk service or ceases to be a Registered Body.

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.

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

The Parties understand that any financial considerations associated with the required forms of collaboration under this Memorandum of Understanding will be met by each Party itself.

Notwithstanding the provisions described in Clause 5, the DBS recognises the value of this Memorandum of Understanding to the e-RB in promoting its eBulk interface but any promotional material/activity in connection with the e-Bulk service making specific reference to the DBS must be sent to and be approved by the DBS before use, such approval not to be unreasonably withheld or delayed.

In any cases of discontinuance, the Parties will honour respective agreed commitments either via the accepted arrangements or agreed alternatives negotiated at that point.

1. REPRESENTATIVES

The person nominated by the e-RB as being responsible for the receipt of integrity keys is:

[Details to be provided prior to signature]

The person nominated by the e-RB as being responsible for all aspects of key management and key accounting is:

[Details to be provided prior to signature]

1. CONFIDENTIALITY

The Parties shall:

treat the other Party’s Confidential Information as confidential;

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

only use such Confidential Information in connection with this Memorandum of Understanding or in connection with the provision of e-Bulk.

Clause 5.1 shall not apply to the extent that:

such disclosure is a requirement of law placed upon the Party making the disclosure;

such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

such information was 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 Memorandum of Understanding; or

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

Each Party may only disclose the other Party’s Confidential Information to its staff, agents, consultants and Subcontractors who are involved in the provision of e-Bulk and who need to know the information, and shall ensure that such staff and Subcontractors are aware of and shall comply with these obligations as to confidentiality.

The receiving Party shall not, and shall procure that its staff do not use any of the disclosing Party’s Confidential Information otherwise than is strictly necessary for the proper performance of (a) its obligations under this Memorandum of Understanding or (b) e-Bulk.

Nothing in Clause 5 shall prevent either Party from using data processing techniques, ideas and know-how gained during the performance of this Memorandum of Understanding 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.

1. RIGHT OF AUDIT
   1. The e-RB shall grant to the DBS, any statutory auditors of the 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 service. The e-RB shall provide all reasonable assistance at any time for the purposes of:
      1. Carrying out an audit of the e-RB’s compliance with this Memorandum of Understanding including without limitation:
         1. the e-RB’s compliance with Clause 5 (Confidentiality); and
         2. all activities performed under this Memorandum of Understanding and security and integrity in connection therewith.
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 Memorandum of Understanding and that this Memorandum of Understanding is executed by a duly authorised representative of the e-RB.

The e-RB warrants that:

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) in accordance with its own established internal procedures.

The DBS warrants and represents that:

* + 1. it has full capacity and authority and all necessary consents to enter into and to perform this Memorandum of Understanding and that this Memorandum of Understanding is executed by a duly authorised representative of the DBS.
  1. The DBS warrants that:
     1. 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) in accordance with its own established internal procedures.

1. INDEMNITY
   1. Without prejudice to any rights or remedies of the DBS the e-RB agrees to indemnify the DBS against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the DBS may suffer or incur as a result of or in connection with any breach of this Memorandum of Understanding by the e-RB including but not limited to any losses suffered as a result of the e-RB deliberately submitting an incorrect eBulk Application.
2. Limitation of Liability

None of the Parties shall exclude or limit its liability for:

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

fraud; or

breach of any obligation as to title implied by statute.

Subject always to Clause 9.1, the liability of either Party against 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 Memorandum of Understanding shall be limited to £100,000.

Subject always to Clause 9.1 and except in respect of liability under 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 provisions of Clause 9.3 shall not be taken as limiting:

the right of one Party to claim from the other Party for additional operational and administrative costs and expenses to the extent that such costs and expenses can be shown to be direct losses; and/or

any wasted expenditure or charges rendered unnecessary and/or incurred by one Party arising from the other Party’s Default to the extent that such expenditure or charges can be shown to be direct losses 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 agreed by the Parties, work and activity to be carried out under this Memorandum of Understanding shall not cease or be delayed by this Escalation Procedure or Dispute Resolution Procedure.

For the avoidance of doubt, the Escalation and Dispute Resolution Procedures in this Clause 10 shall be the exclusive mechanism for resolving Issues or Disputes between the Parties.

Escalation Procedure

The escalation steps (starting at level 3 and concluding at level 1) are as follows:

[Note: table to be populated prior to execution]

| Level | DBS | [ RB Name ] |
| --- | --- | --- |
| 1 | External Suppliers |  |
| 2 | DBS IT Service Management |  |
| 3 | First Line Support Team | Representative |

Either Party may, by notice in writing, escalate an Issue or Dispute to the next level under Clause 10.2.1 if the Issue has not been resolved within ten (10) Working Days or if either Party considers it necessary to escalate the Issue sooner.

The Parties shall formally discuss all Issues and Disputes and any corrective action agreed shall be documented.

Dispute Resolution Procedure

In the event that the Parties cannot resolve a Dispute through the Escalation Procedure:

* + - 1. A technical Dispute shall be subject to 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 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 and to the other Disputing Party. Unless agreed otherwise between the Parties, 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) after the submission of the written reports pursuant to 10.3.3.3.
      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 and to each other and five (5) Working Days thereafter shall submit in writing any comments they wish to make on the other report to the Expert and to each other. Unless agreed otherwise between the Parties, 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 the Memorandum of Understanding.

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 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 he 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 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. Confidentiality of documentation

All documentation disclosed to either party or any third party under the terms of this Clause 10 shall be Confidential Information for all purposes including in respect of any request made under the terms of the Freedom of Information Act 2000.

1. TERMINATION AND CONSEQUENCES OF TERMINATION

Consequences of Termination

The DBS reserve the right in its sole discretion to temporarily or permanently disable the e-RB from using the e-Bulk service and request that all applications are submitted on a paper Disclosure Application Form.

Except as expressly provided in this Memorandum of Understanding, termination of this Memorandum of Understanding shall be without prejudice to any accrued rights and obligations under this Memorandum of Understanding.

1. general provisions

Force Majeure

Subject to the remaining provisions of this Clause 10.1, either Party to this Memorandum of Understanding 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. 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 Memorandum of Understanding. 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 Memorandum of Understanding. Following such notification, this Memorandum of Understanding shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

* 1. Assignment and Subcontracting

Neither Party shall assign, sub-license or declare a trust in respect of its rights under all or a part of this Memorandum of Understanding or the benefit or advantage hereof without the consent of the other Party first being obtained in writing.

Neither Party shall subcontract any of its obligations under this Memorandum of Understanding without first obtaining the other Party’s approval.

* 1. Notices

Any notice or other communication in connection with this Memorandum of Understanding shall be deemed to have been properly delivered if sent by recorded or registered post or by fax and shall be deemed for the purposes of this Memorandum of Understanding to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.

For the purposes of Clauses 10.3.1 and 10.3.2 above the address of each of the Parties shall be as follows:

[Parties’ contact details to be inserted prior to signature]

DBS: Shannon Court, 10 Princes Parade, Princes Dock, Liverpool. L3 1QY

* 1. Entire Agreement

Subject to Clause 12.4.2, this Memorandum of Understanding 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 Memorandum of Understanding shall exclude or limit the liability of any Party in respect of fraudulent concealment or fraudulent misrepresentation.

* 1. Rights of Third Parties

This Memorandum of Understanding shall not create any rights that shall be enforceable by anyone other than the Parties.

* 1. Severability

If any Clause, or part of a Clause, of this Memorandum of Understanding, 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 Memorandum of Understanding as a whole, the legality, validity or enforceability of the remainder of this Memorandum of Understanding (including the remainder of the Clause which contains the relevant provision) shall not be affected.

* 1. Change Control Procedures

No variation of this Memorandum of Understanding shall be effective unless made in writing and agreed between the Parties.

* 1. No waiver

The failure to exercise, or delay in exercising, a right, power or remedy provided by this Memorandum of Understanding or by law shall not constitute a waiver of that right, power or remedy. If either Party waives a breach of any provision of this Memorandum of Understanding 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. 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 Memorandum of Understanding 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; and

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

the Party (being the first Party referred to in Clause 12.9.1) was informed in writing of the commencement of the court proceedings referred to in Clause 12.9.2 and had an opportunity to join as a Party to such proceedings.

* 1. Jurisdiction

This Memorandum of Understanding is governed by English law and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

**Signed**

|  |
| --- |
| Signed by: ……………………………………….  Full name (capitals): ……………………………………….  Position: ……………………………………….  FOR AND ON BEHALF OF [ ] |

**Signed by: ……………………………………….**

Full name (capitals): ……………………………………….

Position: ……………………………………….

FOR AND ON BEHALF OF THE DBS