

eBulk Service – User Agreement

1. Definitions

In this Agreement, the following words and phrases have the following meanings:

"Account Details" means the username and password issued to each User of the System;

"Additional Services" means services to be provided by Security Watchdog upon the Customer's written request, for an additional charge in accordance with the Standard Scale of Charges;

"Administrator" means one or more Users assigned an administrative role by the Customer to undertake administrative actions on its behalf within the System;

"Agreement" means this User Agreement (contract);

"Applicant" means an individual who is the subject of checks carried out in the performance of the Services;

"Application" means a DBS disclosure application;

"Certificate" means the online or paper certificate issued by the DBS which details an individual's criminal conviction or, where appropriate, non-conviction information or warrants that no such information is attributed to an individual;

"Charges" means the charges set out on the webpage <https://www.securitywatchdog.org.uk/ebulk/less-than-200-checks>;

"Customer" means you in your capacity as a legal entity, on behalf of your Users;

"DBS" means the Disclosure and Barring Service;

"Documentation" means the System user guides, System manuals, training materials and printed stationery relating thereto issued by Security Watchdog, as may be amended or upgraded from time to time, and/or any part thereof, available through the eBulk knowledge hub <https://www.securitywatchdog.org.uk/ebulk-submission-guide>;

"Effective Date" means the date the Customer ticks to confirm acceptance of this Agreement;

"Force Majeure" means any event beyond the reasonable control of a party including, without limitation, strikes, labour disputes, acts of God, war, riot, terrorism, civil commotion, epidemic or pandemic, malicious damage, fire, flood and storm;

"Intellectual Property Rights" means any copyright, patent, registered design, trademark, database and/or other

intellectual property right of whatever nature subsisting anywhere in the world;

"Maintenance Windows" means a period during which one or more parts of the System or Service may be unavailable;

"Media" means the media on which Security Watchdog supplies any software or Documentation;

"Registered Body" means an organisation approved and registered with the DBS as being authorised to apply for 'Standard' and 'Enhanced' DBS checks on behalf of staff, volunteers or associates, or where the Registered Body is a registered 'Umbrella Body' with the DBS authorised to apply for Certificates on behalf of 3rd party customer organisations in respect of their staff, volunteers, or associates;

"Service" means the provision of a DBS Checking Service as described on the webpage <https://www.securitywatchdog.org.uk/ebulk/less-than-200-checks>

"Security Watchdog" means Capita Resourcing Limited trading as Security Watchdog, a company registered in England and Wales with number 03949686, and having its registered office at 65 Gresham Street, London EC2V 7NQ;

"Standard Scale of Charges" means Security Watchdog's standard scale of charges from time to time;

"System" means Security Watchdog's online disclosure management solution including but not limited to, its web portal, software and (where the context permits) any Documentation and Media which is to be provided by Security Watchdog as part of the Services;

"Term" means the period of period of twelve (12) months commencing on the Effective Date, and thereafter shall continue automatically unless or until it is terminated by either party pursuant to Clause 9.1;

"User" means an authorised person working for the Customer and authorised to access the System in accordance with the terms of this Agreement;

"Working Day" means Monday-Friday excluding bank and public holidays between the hours of 09.00 and 17.30;

Other technical expressions relating to computers and/or software programs shall have the meanings commonly attributed to them in the computer and information technology industry.

To the extent that there is inconsistency between the terms of the body of this Agreement, the terms of the body of this Agreement shall prevail.

2. Services

- 2.1 This contract (the Agreement) will commence on the Effective Date and shall continue in force for the Term.
- 2.2 In consideration of the payment of the Charges, Security Watchdog agrees to supply the Service to the Customer for the Term in accordance with the provisions of this Agreement.
- 2.3 The obligations of Security Watchdog when providing the Service shall be to facilitate verification, by selected relevant third parties, of the Applicant concerned in the Application.
- 2.4 Security Watchdog shall not be responsible for clarifying or investigating actual or claimed discrepancies or anomalies identified during the process of, or contained in the results of the Application, either with the Applicant or with any third party who provides verification of the Applicant.
- 2.5 Where Applications are carried out using third party services, these shall be delivered in accordance with the methodology employed by those third parties from time to time, and to the service levels available at the time of the relevant checks. In the case that any third party services forming part of the Service become temporarily or permanently unavailable, illegal or Security Watchdog reasonably considers it to have become unreliable, Security Watchdog reserves the right to withdraw that part of the Service.
- 2.7 The Customer accepts responsibility for the selection of the Service provided by Security Watchdog to achieve the Customer's intended results, and Security Watchdog does not warrant the suitability or outcome of the Service in relation to any specific requirement.

3. Licence to Use and audit

- 3.1 Security Watchdog hereby grants to the Customer a non-exclusive, non-transferable licence to use the System during the Term for the sole purpose of processing Applications as part of the Service. The Customer undertakes not to merge, decompile, disassemble, translate or derive any trade secrets or source code in any software components of, or assign, sub-licence or otherwise transfer to any third party access to, the System (including the Documentation) unless prior written agreement has been obtained from Security Watchdog.
- 3.2 No more often than once in any 12 month period, Security Watchdog may, at its expense, upon reasonable notice and during business hours, perform a remote audit of the Service and the Customer's compliance with its obligations in this Agreement. The auditors shall protect the confidentiality of Customer's information and abide by Customer's reasonable security requirements.

4. Support

- 4.1 Security Watchdog shall provide the Customer with technical advice on the use of the System and Service during Working Days by telephone or electronic mail or any other means as may be introduced by Security Watchdog.
- 4.2 Support shall not include services in respect of:
- 4.2.1 incorrect or improper use of the System or operational error; and
- 4.2.2 loss or damage to any data caused by the Customer.
- 4.3 In relation to the provision of such support, the Customer shall report suspected errors promptly to Security Watchdog and co-operate in efforts to provide a remedy, including making skilled staff and necessary facilities (such as, but not limited to, telecommunications facilities) available to Security Watchdog free of charge.

5. Timetable

Security Watchdog will use reasonable endeavours to meet any delivery and/or other dates it has given to the Customer. In the event of any material delay Security Watchdog will inform the Customer thereof as soon as reasonably practicable.

6. DBS Compliance

- 6.1 Security Watchdog warrants and undertakes that at all times during the Term it will ensure that it is a Registered Body with the DBS, and will at all times comply with the DBS's Code of Practice for Registered Bodies.
- 6.2 The Customer warrants and undertakes that at all times during the Term it will ensure that it will:
- 6.2.1 store, handle and retain and dispose of Certificate results strictly in accordance with the DBS Explanatory Guide for Registered Persons and Other Recipients of Certificate Information; and
- 6.2.2 comply with all other DBS policy requirements and regulations as amended from time to time.

7. Use

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

8. Charges and Payment Terms

- 8.1 The price list of Charges for the Service are set out on the webpage <https://www.securitywatchdog.org.uk/ebulk/less-than-200-checks>
- 8.2 Payment of the Charges will be made by the Customer at the time of Application via online payment using a debit/credit card
- 8.3 Security Watchdog reserve the right to increase the Charges where necessary as a result of legislative change (including in relation to the application and/or rate of Value-Added Tax payable), or where third party costs increase outside the control of Security Watchdog. Security Watchdog will provide 90 days' prior written notice to the Customer in the event that any such Charges are increased.
- 8.4 Security Watchdog reserves the right to charge for the provision of any Additional Services required as a result of the failure by the Customer to meet its obligations in this Agreement.
- 8.10 In the event that the Customer needs to postpone the agreed project plan date(s), for any reason other than Security Watchdog's default, then the agreed payment profile as per shall continue to apply in relation to the previously agreed projected dates.

9. Termination and Suspension

- 9.1 Either party may terminate this Agreement by giving at least 90 days' prior written notice to the other party, ending on or after the date 12 months from the Effective Date.
- 9.2 Either party may terminate this Agreement immediately in writing in the event that the other party enters into a voluntary arrangement with its creditors or (being an individual) is the subject of a bankruptcy order or (being a partnership, company or other body) enters into any formal proceedings (or anything analogous) for its administration, receivership, winding-up or liquidation (except for the purpose of amalgamation or a solvent reconstruction) or otherwise ceases to trade.
- 9.3 Either party may terminate this Agreement immediately in writing in the event that the other party commits a material breach of this Agreement and, if the breach is capable of remedy, the party in breach fails to remedy the breach in question within 30 Working Days of receiving written notice from the other party requiring the same.
- 9.4. Security Watchdog reserves the right to revoke the licence to use the System and stop providing the Service immediately if:
 - 9.4.1 it ceases to be a Registered Body;
 - 9.4.2 it is instructed by the DBS or otherwise becomes aware that the Customer has failed to comply with any of its obligations detailed under Clause 6; or
 - 9.4.3 the situation as described in Clause 13.4 (Intellectual Property Rights) occurs.
- 9.5 Upon termination, Security Watchdog shall refund any Charges which have been pre-paid at the date of termination and for which the Customer has not received the Service, but shall otherwise be entitled to retain all Charges.
- 9.6 Security Watchdog reserves the right to suspend the Service in circumstances otherwise entitling it to terminate this Agreement. Such suspension shall not be deemed to represent a waiver of Security Watchdog's right to terminate this Agreement.
- 9.7 Any termination of this Agreement shall be without prejudice to the legal remedies of either party. .
- 9.8 Save for one Administrator, whose access will be terminated 30 days after termination or expiry of the Agreement, any other Users of the System will have their access to the System disabled on termination or expiry. No later than 30 days after the end of the Term, all Customer specific data may be deleted by Security Watchdog.

10. Liability

- 10.1 Neither party shall exclude or restrict its liability in connection with this Agreement resulting from death, personal injury, fraud or any other liability which cannot be excluded or restricted as a matter of law.
- 10.2 The Customer shall not exclude or restrict its liability arising from:
 - 10.2.1 breach of its obligations in Clause 3 (Licence to Use) or otherwise infringement of Security Watchdog's Intellectual Property Rights set out in Clause 13 (Intellectual Property Rights); or

- 10.2.2 receipt of the Service as a bureau service for third parties not explicitly disclosed in this Agreement.
- 10.3 Neither party shall be liable to the other for loss of profits, business, revenue, goodwill or anticipated savings or indirect or consequential loss or damage (whether caused by negligence or otherwise) or the acts or omissions of any third party (whether as a result of negligence or otherwise) arising as a result of the use of the System or Service or otherwise in relation to this Agreement.
- 10.4 Subject to Clauses 10.1, 10.2 and 10.3, the aggregate liability of each party, whether for damages, payments of compensation or by way of indemnity or of any nature whatsoever arising under or in relation to this Agreement (whether in contract or tort, including negligence, or otherwise) shall be limited in any calendar year to 100% of the Charges paid in that calendar year.
- 10.5 Security Watchdog relies on information supplied by the Customer, Applicant and by third parties in providing the Service. The obligations of Security Watchdog are limited to requesting Certificates from third parties and providing these results in a final report. Security Watchdog expressly excludes all liability for the content or accuracy of the information that it receives or provides to the Customer in the course of the Service, whether from the DBS or other third parties, and under no circumstance shall Security Watchdog be liable for any failure to verify the accuracy and completeness of the information provided by the DBS or other third parties, or conducting any further investigations or controlling the time taken by the DBS to process forms or issue Certificates, or any other failure by the Customer to comply with its obligations detailed at Clause 6 above.
- 10.6 Security Watchdog shall maintain in force with a reputable insurance company or companies public and product liability, professional indemnity and employers' liability insurance.
- 10.7 The Customer shall indemnify and hold Security Watchdog harmless from any claim caused by or arising from any breach of this Agreement and from any unauthorised modification or misuse of the Service by the Customer, its servants, agents or sub-contractors.

11. Warranties

- 11.1 Security Watchdog warrants that it will at all times supply the Services by using appropriately qualified and trained personnel.
- 11.2 Security Watchdog will use its reasonable endeavours to maintain availability of the Service but does not warrant that the use of the Service will be uninterrupted or error-free.
- 11.3 Save as expressly set out in this Agreement, all other warranties, representations, or guarantees in relation to this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the performance, satisfactory quality or fitness for purpose of the Services.

12. Consents

The Customer shall be solely responsible for obtaining consent from any Applicant for the purposes of making an Application, and acknowledges that Security Watchdog shall be entitled to assume that such consent has been obtained where the Customer makes an application. Copies of consent in respect of one of more Applicants shall be made available to Security Watchdog on request from time to time.

13. Intellectual Property Rights

- 13.1 All rights and title in and to any Intellectual Property Rights of whatever nature in respect of any part of the System, including any Documentation and Media, or any solution or know-how forming part of the Service shall belong to Security Watchdog.
- 13.2 All rights and title in and to any Intellectual Property Rights of whatever nature in respect of any output of the Service which is exclusively for the Customer (i.e. the result of an Application) shall belong to the Customer.
- 13.3 Security Watchdog, at its own expense, will defend and indemnify the Customer against any reasonable costs and expenses arising out of any claim by a third party that any of Security Watchdog's Intellectual Property Rights in the System or Service infringe the Intellectual Property Rights of that third party, provided that the Customer (i) has used the System or Service as specified by Security Watchdog, (ii) notifies any allegation of such infringement to Security Watchdog without delay, (iii) makes no admission of liability or prejudicial statement in connection with the claim, and (iv) gives all necessary assistance to Security Watchdog in connection therewith.
- 13.4 Where a third party Intellectual Property Rights claim is pending or has arisen or in Security Watchdog's reasonable opinion is likely to be made against the Customer, Security Watchdog may either (i) secure the Customer's right to use the System or Service or (ii) modify it to remove the infringement. However, where neither of options (i) or (ii) can be achieved at reasonable and proportionate cost, Security Watchdog may terminate this Agreement immediately in writing.

14. Data Protection

- 14.1 Each party shall comply with its respective obligations under data protection legislation, including without limitation, the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018), the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), and where applicable the EU GDPR (the General Data Protection Regulation ((EU) 2016/679)), each as amended from time to time.
- 14.2 The parties acknowledge that, for the purposes of this Agreement, the Customer is the Controller in respect of Applicants, and Security Watchdog is the 'Processor' who processes personal data of Applicants on the Customer's instructions as part of providing the Service.

15. Restriction

Neither party shall at any time prior to or within 12 months of termination or expiry of this Agreement, solicit the employment of any person who is employed by the other in the course of providing, assisting or developing the Service, unless first agreed between the parties or as part of a general recruitment campaign not directed solely at such persons.

16. Account Security

The Customer shall be responsible for maintaining adequate security measures to safeguard the Account details of Users, including DBS and/or Office for Criminal Justice Reform security certificates and passwords provided by Security Watchdog. If the Customer has reason to believe that any Account Details have become known by someone not authorised to use them, or are being or are likely to be used in an unauthorised way resulting in misuse of the System or Service, then the Customer shall inform Security Watchdog immediately in writing.

17. Force Majeure

If either party is unable to carry out any of its obligations under this Agreement due to Force Majeure, this Agreement shall remain in effect and both parties' obligations in respect of the matter concerned shall be suspended without liability until the Force Majeure ceases to exist. Either party may terminate the Agreement if the Force Majeure cannot be remedied in all material respects within six (6) months of its commencement.

18. Confidentiality and Freedom of Information

- 18.1 Both parties shall keep confidential (and ensure that their employees, agents and sub-contractors keep confidential) all information received by them relating to any part of the business and affairs of the other party and, in the case of the Customer, any aspect of the Service designated as confidential by Security Watchdog, provided that these obligations shall not apply to information which:
- 18.1.1 is or becomes publicly known through no wrongful act of the party concerned; or
 - 18.1.2 is required to be disclosed by an order of law or other competent authority; or
 - 18.1.3 can be shown to have been independently developed by the receiving party, or otherwise independently known to the receiving party through no wrongful act.
- 18.2 Each party shall notify the other in writing without delay if it becomes aware of any breach of confidentiality, and give all reasonable assistance to the other party in pursuing its rights where a breach of confidence occurs.
- 18.3 If the Customer receives a request under the Freedom of Information Act 2000 which is relevant to the Service, Security Watchdog shall on the Customer's request provide all reasonable assistance without delay.

19. Notices

- 19.1 Any notice to be served under this Agreement shall be in writing and either delivered personally, sent by first class recorded delivery or e-mail to the party to whom the notice is addressed at its address set out in this Agreement or such other address subsequently notified in writing to the other party.
- 19.2 A notice is deemed duly given if delivered personally when left at the recipient's address for service or if sent by first class recorded delivery post, at 10.00 hours on the second Working Day following the recorded day of posting or if sent by e-mail, at the time of transmission within business hours.

20. General

- 20.1 No press or other public statement shall be made in respect of this Agreement without the prior written consent of the other party, such consent will not to be unreasonably withheld or delayed.
- 20.2 No variation of this Agreement shall be binding unless either (i) made in writing and signed by a duly authorised officer of each party or (ii) where Security Watchdog publishes an updated version of this Agreement, it notifies the Customer and obtains fresh approval from the Customer to be bound by the Agreement.

- 20.3 This Agreement sets out the entire agreement and understanding between the parties in connection with its subject matter and shall override all previous verbal or written agreements and understandings, save in respect of fraudulent misrepresentation. The parties acknowledge that Security Watchdog is an independent contractor, and nothing in this Agreement shall create a partnership, joint venture, agency or employment relationship.
- 20.5 The parties shall perform or execute all acts, documents and other things as may reasonably be required for securing each of the rights and obligations of the parties under this Agreement.
- 20.6 No whole or partial failure to exercise and no delay in exercising any right hereunder shall operate as a waiver unless expressed as such in writing.
- 20.7 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 20.8 The parties do not intend any third party to have the right to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 20.9 If any part of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.
- 20.10 This Agreement shall be governed by and construed in accordance with English law and each party irrevocably submits to the exclusive jurisdiction of the Courts of England.