

# World-Check Subscription Terms and Conditions February 2010

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These Terms and Conditions together with your Order Form (together the “Agreement”) govern your use of the Licensed Materials to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document whether or not signed by us).

## 1. Definitions

1.1 In these Terms and Conditions:

“Access Method” means the method by which you are licensed to access the Licensed Materials being either by way of data file made available for download and/or online access in each case at [www.world-check.com](http://www.world-check.com) as specified in the Order Form;

“Additional User Form” means our standard form for the addition of Authorised Users beyond the number set out in the Order Form;

“Affiliates” means a party’s direct and indirect holding companies and all subsidiaries of such holding companies as such expressions are defined in the UK Companies Act 2006;

“Authorised Users” means the maximum number of your employees as are authorised to have access to the Licensed Materials as set out in the Order Form;

“Commencement Date” the date the licence we grant to you under clause 2.1 starts;

“Confidential Information” means the terms of this Agreement and all or any information of or in the possession of the disclosing party or any of its Affiliates of any kind or description where such information has been specifically marked or disclosed as confidential or which by its nature should reasonably be assumed to be confidential. In relation to us, our Confidential Information shall include the structure, arrangement and content of the Licensed Materials, the manner of their creation and maintenance;

“Data Protection Laws” means the UK Data Protection Act 1998 as amended from time to time and subordinate legislation;

“Filter Provider” means any third party providing software to you for use in conjunction with the datafile version of the Licensed Materials as identified in the Order Form;

“Initial Term” means the initial term of the Agreement as set out in the Order Form;

“Intellectual Property” means all rights of whatever nature anywhere in the world (registered or unregistered) including copyright, design rights, know-how, trade secrets, technology, systems, methods, expertise, patents, data base rights, trade marks and trade names;

“Licensee” the person or entity identified as such in the Order Form;

“Licence Fee” the fee set out in the Order Form payable by you for access to the Licensed Materials and for the provision of any Services during the Initial Term as such fee may be amended on any renewal of the Initial Term;

“Licensed Materials” means the World-Check reference database and shall include all individual records therein, updates, modifications, downloads, print-outs, copies or other derivatives of it and reports and other materials generated from it but shall exclude Third Party Materials;

“Licensor” means Global Objectives Limited trading as World-Check;

“Limited Download Rights” means the right to download the Licensed Materials during the Limited Download Periods;

“Limited Download Periods” the periods identified as such in the Order Form;

“Order Form” means the most recent version of our standard order form relating to your use of the Licensed Materials;



“Permitted Purpose” means the use of the Licensed Materials by you to process the Personal Data within them for your own internal business purposes solely to (i) prevent, detect or investigate any unlawful act or (ii) discharge any function designed to protect the public against dishonesty, malpractice or seriously improper conduct and (iii) where necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on you in connection with the employment of any person;

“Permitted Records” means if your Access Method is by way of data file download, the maximum number of customer records that you may screen against the Licensed Materials as specified in the Order Form. As an example, if the Licensee holds three different records for the same customer, these will constitute three Permitted Records;

“Personal Data” means personal data within the Licensed Materials;

“Regulatory Requirements” means all statutory and other rules, regulations, instruments and provisions in force from time to time having statutory effect and applicable to a party including all data protection and privacy laws;

“Services” means any research services that we may in our discretion agree to perform for you from time to time in connection with the Agreement;

“Special Conditions” means any special conditions to which your license to the Licensed Materials is subject identified as such in the Order Form;

“Term” means the Initial Term and any renewal of it;

“Third Party Materials” means all materials created by or belonging to third parties contained within or accessible or referred to in the Licensed Materials including the underlying information sources accessible from the Licensed Materials by means of a link or web address whether in live or cached form;

“us/we/our” (or derivatives) means the Licensor;

“you/your” (or derivatives) means the Licensee;

1.2 The definitions of words and phrases in these Terms and Conditions shall apply wherever such words and phrases appear in the Agreement. Words and expressions defined in the Data Protection Laws shall have the same meanings in the Agreement. The use of the word “Including” or similar shall be construed without limitation.

## 2. Grant of Licence

2.1 With effect from the Commencement Date, we grant you a non-exclusive, non-transferrable licence to use the Licensed Materials by way of the Access Method and at the location(s) specified in the Order Form solely for the Permitted Purpose during the Term. Your Licence will be subject to any Special Conditions which in the event of conflict, shall prevail over these Terms and Conditions.

2.2 If you have Limited Download Rights this will be specified in the Order Form and you are only licensed to access the Licensed Materials during the Limited Download Periods.

2.3 The Order Form states whether your Affiliates are entitled to use the Licensed Materials pursuant to the Agreement. If so, the rights extended to you shall be extended to your Affiliates on the same terms and you agree to and accept the provisions of the Agreement on your own behalf and as agent for such Affiliates.

2.4 You shall procure that any such Affiliates shall act on the basis that they are a party to the Agreement and have agreed to be bound by it. However, you alone shall be entitled to enforce the provisions of the Agreement and be responsible for the payment of the Licence Fee and you shall be liable for any breach of the Agreement caused by any such Affiliate.

2.5 For this purpose your Affiliates shall not be treated as if they are a party to the Agreement for the purpose of clause 14.8.

2.6 Filter Provider shall be entitled to access and download the datafile version of the Licensed Materials on your behalf for the purpose of screening your Permitted Records. You shall be liable for any breach of the Agreement caused by Filter Provider. We shall have no responsibility or liability for any software or other products or services provided to you by Filter Provider.

## 3. Ownership of Intellectual Property

3.1 We shall retain title to all Intellectual Property in or to the Licensed Materials and you do not acquire any rights in the Licensed Materials except as set out in the Agreement.

3.2 You shall not remove any copyright or similar notice contained in the Licensed Materials.

3.3 We may alter, modify all or any part of the Licensed Materials as we consider necessary.

3.4 Except as permitted by the Agreement you shall not (a) copy, modify, adapt, disclose, make available or use; (b) extract, re-utilise or publish; (c) combine with any other materials or create any derivative works based on; or (c) reverse engineer, disassemble or decompile in each case the whole or part of any of the Licensed Materials.

#### **4. Fees, payment and invoicing**

4.1 You agree to pay the Licence Fee. The Licence Fee is stated exclusive of value added or other taxes or duties chargeable on it and you shall pay such taxes or duties and the Licence Fee in full and without deduction, set-off or withholding of any kind. If you are under a legal obligation to make any withholding or deduction against the Licence Fee, it shall be deemed to be grossed by an amount equal to such withholding or deduction such that the net amount that you shall pay to us shall always be equal to the Licence Fee as set out in our invoice.

4.2 The Licence Fee for the Initial Term will be invoiced after the date of the Agreement. The Licence Fee for renewal periods shall be invoiced in advance of renewal. All invoices shall be sent to your invoice contact set out in the Order Form. The Licence Fee shall be paid within 30 (thirty) days of receipt by you of our invoice whether or not you have accessed or used the Licensed Materials by then.

4.3 We shall be entitled to charge interest on late payments at the rate of 2% above the standard base rate of Barclays Bank Plc from time to time. In addition to and without prejudice to our right to later terminate the Agreement under clause 13.1, we may suspend your access to the Licensed Materials until all overdue payments have been made.

4.4 If your Access Method is (a) by way of data file download, the Licence Fee is based on the number of Permitted Records; and/or (b) online, the Licence Fee is based on the number of Authorised Users. If your Affiliates are entitled to use the Licensed Materials, the number of Permitted Records is an aggregate for both you and your Affiliates. You shall inform us of any increase in the Permitted Records and/or Authorised Users and this will lead to a pro rata increase in the Licence Fee. The number of Permitted Records will be reviewed on each anniversary of the Commencement Date. You will provide us with copies of or access to your records as we may reasonably require to verify that you have not exceeded the Permitted Records. Upon automatic renewal of the Initial Term (or any renewal thereof) we may increase the Licence Fee by a maximum of 10%.

#### **5. Authorised Users**

5.1 We shall provide passwords or authorisation codes to enable Authorised Users to access the Licensed Materials. You shall ensure that such passwords or codes are only used by the Authorised Users to whom they are issued and are kept secure and confidential and not shared with any other person. No concurrent usage of passwords or codes is permitted. If an Authorised User ceases to be employed by you, we must be informed immediately. You shall ensure that no person other than an Authorised User accesses the Licensed Materials.

5.2 You may increase the number of Authorised Users by signing an Additional User Form.

5.3 To ensure that we are at all times able to contact Authorised Users in connection with their use of the Licensed Materials and anything that may affect it, you must ensure that your Authorised Users keep their email addresses and other personal details accurate and up to date by using the users details area of the subscriber section of [www.world-check.com](http://www.world-check.com).

#### **6. Systems**

6.1 You will ensure that your systems and data structure meet any minimum requirements specified by us as being necessary to use the Licensed Materials. It is in any event your responsibility to ensure that your systems are capable of using the Licensed Materials

## 7. Support and Updates

7.1 We will endeavour to correct faults in the Licensed Materials in a timely manner and will provide reasonable assistance on the use of the Licensed Materials in each case free of charge.

7.2 We shall make available to you free of charge all updates of the Licensed Materials generally made available by us to our customers.

## 8. Term

8.1 The Agreement shall continue for the Initial Term unless terminated earlier in accordance with the Agreement. Thereafter the Agreement will renew automatically immediately following expiry of the Initial Term (or any renewal thereof) for a further period equal to the Initial Term unless cancelled by notice in writing given by either party to the other at least 30 (thirty) days prior to any such expiry.

## 9. Warranties

9.1 We warrant that we are duly incorporated in England and entitled to license or sublicense the Licensed Materials to you pursuant to the Agreement.

9.2 We make no warranties or representations with regard to the Third Party Materials.

9.3 To the maximum extent permitted by law, we exclude and disclaim all conditions, terms, representations (other than fraudulent representations) and warranties relating to the subject matter hereof, whether express or implied, that are not explicitly stated in the Agreement including the implied warranties of satisfactory quality and fitness for a particular purpose. In particular, we do not warrant or represent that use of the Licensed Materials will meet your obligations under the Regulatory Requirements applicable to you.

## 10. Limitations of Liability

10.1 Our aggregate liability for any and all claims arising in relation to the Agreement shall not exceed one and a half times the Licence Fee paid for the period in which the liability arose.

10.2 Neither party shall be liable to the other for any loss of profits, loss of business, loss of goodwill, loss of opportunity, indirect and/or consequential loss or damage of any kind.

10.3 Neither party shall have any liability under the Agreement where such liability arises directly or indirectly from causes beyond that party's reasonable control including (a) strikes, lock outs or acts of God; (b) any act or omission of the other party, its employees, contractors, suppliers or any other person acting on its behalf; (c) any act or omission of or any fault in any product or service supplied by any third party including Third Party Material providers; (d) the unavailability of the internet and periods of maintenance or update or other reasonable periods of downtime in relation to the Licensed Materials or any information technology systems upon which we rely.

10.4 Notwithstanding any other provision of the Agreement, our liability for fraud or for death or personal injury resulting from our own or our employees' agents or sub-contractors negligence or for any other liability that cannot be limited by applicable law shall be unlimited.

10.5 You accept that:

(a) You should not rely solely upon the Licensed Materials when making any decision to deal with any person or entity and that before making any such decision you should make independent checks of such person or entity to verify the information contained in the Licensed Materials and their resulting suitability as a commercial counterparty.

(b) If the Licensed Materials contain negative allegations about any person or entity, it should be assumed that such allegations are denied by them;

(c) Information provided by us in the Licensed Materials is necessarily in summary form and should be read and used by you in context of the full details available in the Third Party Materials;

(d) The Licensed Materials cannot be an exhaustive database of persons or entities of whom you may wish or be obliged to make enquiries before entering into a financial or other relationship with them.

10.6 You acknowledge that:

- (a) The inclusion or exclusion of any person or entity in or from the Licensed Materials should not automatically be taken to draw any particular inference (negative or otherwise) about them including as the result of the linking of any person or entity to any other person or entity identified in the Licensed Materials. The nature of linking varies considerably;
- (b) Many persons are profiled in the Licensed Materials solely because they hold prominent political or other positions or are connected to such individuals;
- (c) While every attempt is taken to ensure that the Licensed Materials are kept up to date, we cannot guarantee that information contained in them in relation to any person or entity will not have changed or be correct;
- (d) We cannot guarantee that we will find any or all of the published information available in connection with any individual or entity;
- (e) We make no warranty or representation about and disclaim all liability for the accuracy, completeness or currency of any Third Party Materials.

## 11. Confidential Information and Data Privacy

11.1 The recipient of the other party's Confidential Information ("Recipient") shall at all times keep it secret and confidential and not disclose or divulge any part of it to any third party except to those of the Recipient's officers or employees who require it to be disclosed to them solely for the purpose of the performance of the Agreement (the Recipient shall be liable for any breach of the Agreement caused by any such officer or employee).

11.2 Only Authorised Users shall be deemed to require access to the Confidential Information comprised of the Licensed Materials.

11.3 The Recipient shall protect the other's Confidential Information using the same degree of care (but in any event no less than a reasonable degree of care) as the Recipient uses to protect its own confidential information.

11.4 The Recipient shall not use the other's Confidential Information for any purpose other than performance of its rights or obligations under this Agreement.

11.5 There shall be excluded from the provisions of Clause 11.1 above any information that (a) is in the public domain, or comes into the public domain otherwise than by breach of the Agreement provided that the Licensed Materials shall be treated at all times as Confidential Information notwithstanding that information within them is derived from sources within the public domain; or (b) was lawfully in the possession of the Recipient or any of its Affiliates prior to the date of disclosure by the other party; or (c) was received by the Recipient or its Affiliate from a third party without known breach of any confidentiality agreement with the other party; or (d) is required to be disclosed by law, regulation or court order.

11.6 The Recipient shall indemnify the other party against all costs, liabilities and expenses that the other party may suffer or incur as a result of a breach of any of the obligations of the Recipient under this clause 11.

11.7 We warrant that the Personal Data has been processed by us in accordance with the Data Protection Laws.

11.8 You agree that Personal Data will be processed by you in accordance with all Regulatory Requirements applicable to you including any applicable requirement for you to notify any individual that you intend to screen their personal data using the Licensed Materials. You will have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where Personal Data is transmitted over any network and which provide a level of security appropriate to the risk represented by the processing and the nature of the Personal Data.

11.9 You warrant to us that you have no reason to believe in the existence of any Regulatory Requirements binding on you that would have a substantial adverse effect on your ability to perform your obligations under the Agreement and you will inform us if you become aware of any such Regulatory Requirements. You will use all reasonable endeavours not to use the Personal Data in such a way as to knowingly or negligently cause us to breach our obligations under the Data Protection Laws.



11.10 You will ensure that any employees or third parties (including your Affiliates and any Filter Provider) involved in processing the Personal Data will only process the Personal Data in accordance with this Agreement, act in accordance with your instructions and will respect and maintain the confidentiality and security of the Personal Data.

11.11 You will respond promptly and properly to any reasonable and proper enquiries from us relating to the processing of the Personal Data and cooperate in good faith with us and any data protection authority concerning all such enquiries within a reasonable time. In the event of a dispute or claim brought by an individual or data protection authority against you or us in connection with the processing of Personal Data under the Agreement, you and/or we will inform each other about any such disputes or claims, and will co-operate with a view to settling them amicably and in a timely fashion.

11.12 Except as required by the Regulatory Requirements applicable to you, you will not reveal the identity of the Licensed Materials or us or provide copies of any part of the Licensed Materials to any person or entity whose Personal Data or data is contained within the Licensed Materials or to persons acting on their behalf. Without giving them access to the Licensed Materials, you may disclose to such person or entity the content of the underlying information sources accessible from the Licensed Materials in relation to such Personal Data or data.

## 12. Infringement

12.1 We agree to defend and indemnify you and at our option to settle any claim, action or proceeding based upon a third party's claim of Intellectual Property infringement asserted against you in relation to your use of the Licensed Materials in accordance with the Agreement provided (a) you provide prompt written notice to us of any such claim; and (b) we are given the right to control and direct the investigation, defence and settlement of each such claim; and (c) you provide all reasonable assistance to us (at our cost) in relation to the investigation, defence and settlement of each such claim.

12.2 Should the Licensed Materials become, or be likely to become, the subject of a claim for Intellectual Property infringement, you shall permit us, at our option and expense to (a) procure for you the right to continue using the Licensed Materials; or (b) replace or modify the Licensed Materials so that they become non-infringing; or (c) (if we are unable to accomplish the objectives set out in either (a) or (b)) terminate the Agreement and pay to you a pro-rata refund of the Licence Fee which such refund shall (subject to clause 12.1) be in full and final settlement of our liabilities to you.

## 13. Termination

13.1 Either party may terminate the Agreement with immediate effect by notice in writing to the other if the other party (a) is in material breach of the Agreement, which breach is either not capable of remedy or has not been remedied within 30 (thirty) days of receiving notice specifying the breach; or (b) becomes subject to any bankruptcy or insolvency proceeding, becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority or has been liquidated, voluntarily or otherwise (or any analogous proceedings or event in any jurisdiction).

13.2 All of your rights to use the Licensed Material shall cease upon expiry or termination of the Agreement. On expiry or termination, you will at our option either immediately return the Licensed Materials or immediately certify in a form reasonably acceptable to us that all such Licensed Materials have been destroyed. However, you may keep copies of any reports generated from and forming part of the Licensed Materials to the extent necessary to comply with the Regulatory Requirements applicable to you. The provisions of the Agreement relating to the Licensed Materials shall continue to apply to any such copies for as long as they are kept by you.

13.3 Termination or expiry of the Agreement shall be without prejudice to the rights and liabilities of the parties that have already at that time accrued and to clauses 1, 2.4, 3, 4, 9, 10, 11, 12, 13.2, 13.3, 14 and 15 which shall remain in full force and effect.

## 14. Miscellaneous

14.1 Nothing in the Agreement is intended to or will prevent either party from complying with and each party will remain responsible for compliance with, the Regulatory Requirements applicable to it.

14.2 You shall not assign or sublicense your rights under the Agreement. We may assign our rights and obligations to any Affiliate of ours.

14.3 Any waiver, amendment, modification or alteration of any provisions of the Agreement shall not be effective unless made in writing and signed by both parties.

14.4 If any provision of the Agreement is declared or found to be invalid, illegal, unenforceable or void, then both parties shall be relieved of the obligations arising under such provision but the remainder of the agreement shall remain in full force and effect.

14.5 No claim arising out of the Agreement may be brought by either party after the date which is the earlier of the date (a) which is 6 (six) months after the date on which the party with the right to claim first became aware or ought reasonably to have become aware of the claim (b) when such claim becomes barred by statute as determined in accordance with clause 14.6.

14.6 The laws of England and Wales shall govern the Agreement and the parties submit to the non-exclusive jurisdiction of the English courts.

14.7 The Agreement supersedes all prior proposals, understandings or agreements relating to its subject matter.

14.8 A person who is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

14.9 The Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original and which together evidence the Agreement.

## 15. Communication and Notices

15.1 We will communicate with you and your Authorised Users in connection with your use of the Licensed Materials and anything that may affect it via the subscriber section of [www.world-check.com](http://www.world-check.com) and by email. If you and we agree you may nominate one person within your organisation to be the recipient of all such communications with you and your Authorised Users.

15.2 Any notice delivered under the Agreement shall be in writing and delivered by pre-paid first class post (or pre-paid overseas equivalent) to or left at the recipient's addresses or faxed to the recipients fax number in each case appearing in the Order Form (or such other address or fax number as may be notified in writing in accordance with this clause). In the case of the Licensee, its address and fax number for service of notices shall be those given as its invoicing contact details.

15.3 Notices delivered personally shall be deemed delivered immediately, by post posted from and to addresses in the UK, on the second working day after posting or where posted from or to addresses overseas, on the tenth working day after posting and by fax, on transmission subject to receipt of a successful transmission record.