

## 1. Definitions

In these Terms the following words shall have the following meanings:

- 1.1 'Client' means the seller, buyer, potential buyer, owner or lender in respect of the Property who is the intended recipient of the Report notified in writing to us.
- 1.2 "Company" means a company registered at Companies House in respect of which DevAssist has been instructed to provide a Service.
- 1.3 "Intellectual Property Rights" means copyright, patent, design right (registered or unregistered), service or trade mark (registered or unregistered), database right, or other data right, moral right or know how or any other intellectual property right.
- 1.4 "Literature" means DevAssist brochures, price lists and advertisements in any type of media, including the content of the Website.
- 1.5 "Order" means the request for Services by You.
- 1.6 "Property" means an address or location for which DevAssist provides a Service.
- 1.7 'Report' means the report prepared by DevAssist in respect of the Property.
- 1.8 "Service(s)" means the supply of services by DevAssist to You including but not limited to property searches, reports and photographs, and other services from time to time and includes our instructions to a Supplier, on your behalf and the dissemination of the information subsequently provided by the Suppliers.
- 1.9 "Supplier" means any organisation or third party who provides data or information of any form to DevAssist for the purposes of providing the Services.
- 1.10 "Terms" means these terms and conditions of business.
- 1.11 "Website" means our websites located at [www.devassist.co.uk](http://www.devassist.co.uk)
- 1.12 "We", "Us", "Our", DevCheck, DevAssess, DevHelp, DevAssist are references to DevAssist Ltd a company incorporated in England and Wales with registered number 07915521 England and whose registered office is situated at 73 Church Rd, Hove, East Sussex, BN3 2BB.
- 1.13 "You" and "Your" are references to the individual, company, partnership or organisation who accesses the Website or places an Order.

## 2. Agreement

- 2.1 The agreement between You and DevAssist shall come into existence when DevAssist accepts your completed Order.
- 2.2 These Terms, as maybe varied from time to time, shall govern the agreement between You and DevAssist to the exclusion of all other terms and conditions.
- 2.3 By submitting an Order, you shall be deemed to have accepted these Terms and You agree to be bound by these Terms when You place any Order. Your continued use of the Services shall amount to your acceptance of any variations to these Terms.
- 2.4 These Terms together with the Literature and Order comprise the whole agreement relating to the supply of the Services to You by DevAssist You have not relied upon any representations save insofar as the same have been expressly incorporated in these Terms and You agree that you shall have no remedy in respect of any misrepresentation (other than fraudulent misrepresentation) which has not become a term of these Terms.

## 3. Services

- 3.1 DevAssist shall use reasonable care and skill in providing the Services to You and shall use only established and trusted suppliers where obtaining information or data from third parties. Where Suppliers require or provide their own conditions for use to which you are required to be a party you agree to enter into the relevant contract with the Supplier.
- 3.2 We reserve the right to make any changes to the Services described in our Literature to conform with any applicable statutory requirements or which we deem appropriate in our sole discretion.
- 3.3 Our Services are provided solely for Your use, or the use of Your Clients on whose behalf You have commissioned the Services, and shall not be used or relied upon by any other party, without Our written consent.
- 3.4 In providing search reports and services DevAssist will comply with the Search Code

3.5 DevAssist assumes that the value of the property does not exceed £2 million and that it is the responsibility of the customer to advise the firm at the time of requesting the search where the value of the property exceeds £2 million

3.6 In providing search reports and services DevAssist will comply with the Search Code

#### **4. Price and Payment**

4.1 The price payable for the Services shall be in pounds sterling. The price for the Services shall be exclusive of any value added tax or other similar taxes or levies, which You shall be additionally liable to pay to DevAssist.

4.2 Payment is due in full from You within 30 days of the date of Our invoice (or as contracted) without deduction, counterclaim or set off.

4.3 DevAssist reserves the right to amend its prices from time to time and the Services will be charged at the price applicable at the date on which an Order is submitted.

4.4 If You fail to pay Our invoice on or before the due date, DevAssist may charge You interest on the late payment at the prevailing statutory rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 until the outstanding payment is made in full.

#### **5. Cancellation of Services**

5.1 If You want to cancel an Order submitted to Us then You must notify Us in writing as soon as reasonably practicable after the Order has been submitted. Unless otherwise agreed by Us in writing, You shall remain liable for any expenses or disbursements We may have incurred prior to receiving your notice of cancellation. All expenses or disbursement must be paid in accordance with Term 4.2.

#### **6. Termination**

6.1 DevAssist may suspend or terminate any agreement with You without any liability to You with immediate effect if at any time:

(i) You fail to make any payment due in accordance with Term 4;

(ii) If You repeatedly breach or commit or cause to be committed a material breach of these Terms; or

(iii) You commit a breach and You fail to remedy the breach within 7 days of receipt of a written notice to do so.

6.2 If the agreement is terminated under this Term 6 and You have made an advance payment We will refund You a reasonable proportion of the balance as determined by Us having regard to the value of Services already provided to You.

#### **7. Events Beyond Our Control**

7.1 We reserve the right without notice or liability to You, to defer the date of performance or to cancel the provision of the Services (as set out in a particular Order) or reduce the volume of the Services ordered by You if we are prevented from or delayed in the carrying on of Our business due to circumstances beyond Our reasonable control provided that, if the event in question continues for a continuous period in excess of [60] days, You shall be entitled to give notice in writing to us to terminate the Order.

#### **8. Warranties and Limitation of Liability**

8.1 We provide warranties and accept liability only to the extent stated in this Term 8.

8.2 Unless otherwise indicated on the front page of the Report, We confirm that any individuals within Our business who conducted any searches has not knowingly had any personal or business relationship with any individual involved in the sale of or dealings with the Property.

8.3 In providing the Services you acknowledge and accept that:-

(i) DevAssist's only obligation is to exercise reasonable care and skill in providing the Services.

(ii) DevAssist shall not be liable for any indirect or consequential loss, damage or expenses (including loss of profits, loss of contracts, business or goodwill) howsoever arising out of any problem, event, action or default by DevAssist.

(iii) The Services do not include any information relating to the value or worth of the Property or the Company.

(iv) The Services have not been prepared to meet Your or anyone else's individual requirements and You assume the entire risk as to the suitability of the Services and waive any claim of detrimental reliance upon the same.

(v) DevAssist cannot warrant or guarantee that the Website or any website linked to or from the Website will be uninterrupted or error free or free of viruses or other harmful components and furthermore DevAssist cannot warrant the performance of any linked internet service not operated by DevAssist. Accordingly DevAssist shall not be liable for any damage or loss whatsoever caused: by any virus, including damage to Your computer equipment, software, data or other property resulting from Your access to, use of or browsing of the Website; or as a result of downloading any material, data, text, images, video or audio from the Website; or by the contents of or Your access to, any website linked to the Website; or for inaccuracies or typographical errors of information or on the Website.

(vi) Time shall not be of the essence with respect to the provision of the Services.

(vii) Any services other than our Services, which are advertised in the Literature are for information only, and We are not responsible for any such services which You may use as a result of our recommendation or otherwise. Any such third party services may be subject to the terms and conditions of the relevant third party service provider.

8.4 In connection with the Report You undertake to make a reasonable inspection of any results set out therein to satisfy Yourself that there are no defects or failures. In the event that there is a material defect You will notify Us in writing of such defect as soon as possible after its discovery and acknowledge that DevAssist shall not be liable for any defect, failure or omission relating to the Services that is not notified to DevAssist within three months of the date of the issue becoming apparent and in any event within two years of the date of the Service.

8.5 We use only established and trusted data search providers as Suppliers but where information contained in the Services and/or the Report is obtained by us from these Suppliers DevAssist cannot control the accuracy or completeness of the information provided by the Suppliers, nor is it within the scope of DevAssist's Services to check the information provided by its Suppliers. Accordingly, you hereby acknowledge and accept, notwithstanding any other legal remedy available to you in this Term 8 or otherwise, that DevAssist shall not be liable for any faults, errors, omissions or inaccuracies of whatever nature in the information contained in the Reports and/or Services which is due to or caused by the Supplier EXCEPT WHERE such fault, omission, error or inaccuracy is caused by DevAssist's negligence and including negligent or incorrect entry of data by DevAssist in the records searched, any negligence or incorrect interpretation by DevAssist of the records searched and any negligent or incorrect recording of that interpretation by DevAssist in the Report and/or Services provided by DevAssist.

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8.6 Where our Suppliers may be in breach of their own terms of business with us and as a result of that breach the information contained in the Services or the Report is inaccurate or incomplete we undertake to use our reasonable endeavours to assist you with any complaint or claim you choose to bring against the Supplier in your capacity as the end-user of the service provided by the Supplier or as agent for the Client.

This undertaking is strictly subject to the following conditions:-

- (i) Any such claim is of a material nature and arises solely and directly out of the inaccuracies, errors or omissions of the data provided by the Supplier.
- (ii) The terms and conditions of the Supplier provide for the course of action you have chosen to follow.
- (iii) You have used all reasonable endeavours to mitigate any loss or damage you have suffered as a result of the inaccuracies errors or omissions of the data provided by the Supplier.
- (iv) You agree to pay our reasonable costs if you require our input in this action beyond what we deem to be reasonable. In certain circumstances we may bring a claim against our Supplier on your behalf (and in consultation with you) provided you have given us full particulars of the claim and written confirmation that you authorise us to (i) decide what action if any to take; (ii) that we shall have exclusive control over, and conduct of, all claims and proceedings; (iii) that you shall provide us with all assistance that we may reasonably require in the conduct of any claims or proceedings; and (iv) that you shall bear the cost of any proceedings on the basis that you shall be entitled to retain all sums recovered in any action for your own account.

8.7 In any event, and notwithstanding anything contained in these Terms, DevAssist's total liability in contract, tort or otherwise shall not exceed £2m in respect of any single claim, event, or series of related claims or events and, save as set out herein, all warranties, conditions and other terms implied by statute or common law are excluded, to the fullest extent permitted by law.

## **9. Independent dispute resolution**

9.1 If you make a complaint and we are unable to resolve it to your satisfaction you may refer the complaint to The Property Ombudsman scheme (website [www.tpos.co.uk](http://www.tpos.co.uk), email: [admin@tpos.co.uk](mailto:admin@tpos.co.uk)). We will co-operate fully with the Ombudsman during an investigation and comply with his final decision.

## **10. Intellectual Property Rights**

10.1 You acknowledge that all Intellectual Property Rights in the Services are and shall remain owned by either DevAssist or our Suppliers and nothing in these Terms purports to transfer, assign or grant any rights to You in respect of the Intellectual Property Rights.

## **10. Intellectual Property Rights**

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10.2 You agree that You will treat and will procure that Your clients on whose behalf You have commissioned the Services will treat as strictly private and confidential the Services and all information which they obtain from the Services.

10.3 You agree that You will procure that Your clients on whose behalf You have commissioned the Services will not, except as permitted herein or by separate agreement with DevAssist change, amend, remove, alter or modify the Service or any trademark or proprietary marking in the Service.

10.4 You agree to indemnify Us and keep us indemnified from and hold us on demand, harmless from and against all costs, claims, demands, actions, proceedings, liabilities, expenses, damages or losses (including without limitation, consequential losses and loss of profit, and all interest and penalties and legal and other professional costs and expenses) arising out of or in connection with a breach of this Term 9.

## **11. General**

11.1 You shall not be entitled to assign Your agreement with Us or any part of it without Our prior written consent.

11.2 We may assign the agreement or any part of it to any person, firm or company.

11.3 The parties to these Terms do not intend that any term of Our agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to these Terms or a permitted assignee.

11.4 Failure or delay by Us in enforcing or partially enforcing any provision of the agreement will not be construed as a waiver of any of Our rights under the agreement.

11.5 Any waiver by Us of any breach of, or any default under, any provision of the agreement by You will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the agreement.

11.6 If any provision or part of a provision is held to be invalid or unenforceable by any court or other body of competent jurisdiction, that provision or part of that provision shall be deemed severable and the other provisions or the remainder of the relevant provision will continue in full force and effect.

11.7 Unless otherwise stated in these Terms, all notices from You to DevAssist or vice versa must be in writing and sent to DevAssist's registered office address as stipulated in Term 1.12 or Your address as stipulated in the Order.

11.8 The Agreement shall be governed by and construed in accordance with English law and shall be subject to the non-exclusive jurisdiction of the English Courts.