



## Digital Background Terms and Conditions V1.0

### 1. About us

1.1 **Company Details.** Digital Background Limited (company number 14946840) (“we” and “us”) is a company registered in England and Wales and our registered office is at The Apex, Derriford Business Park, Brest Road, Plymouth, PL6 5FL. Our VAT Number is GB 449 9671 30. We operate the website [www.digitalbackground.co.uk](http://www.digitalbackground.co.uk) (“Website”).

1.2 **Contacting Us.** Our support team can be contacted via e-mail at [info@digitalbackground.co.uk](mailto:info@digitalbackground.co.uk). The procedure for giving us formal notice of any matter under the Contract is set out in clause 18.

1.3 In these Terms, the definitions set out in below shall apply:

- (a) **Applicable Laws** the laws of England and Wales, including the Data Protection Legislation.
- (b) **Applicant** the individual who provides their details to Digital Background (whether via the Customer or directly into the Software at the direction of the Customer) in connection with an Application (including the 3<sup>rd</sup> Party services as applicable).
- (c) **Application** an Application to carry out an online vetting and screening check in relation to an Applicant.
- (d) **Applicant Data** the Applicant details, including any personal data, required for the purpose of processing an Application (including the Attributes if applicable).
- (e) **Attributes** an item of personal data or document image relating to an Applicant including identity data verified as part of the 3<sup>rd</sup> Party Services, unverified data submitted by the Applicant and any metadata or statement relating to an Applicant.
- (f) **Authorised Users** the Customer and (if the Customer is a company) those Customer employees who are authorised by the Customer to use the Services.
- (g) **Data Controller, Data Processor and Data Subject** shall have the meanings set out in the Data Protection Legislation.
- (h) **Data Protection Legislation** all laws relating to the use, protection and privacy of Personal Data (including the privacy of electronic communications) from time to time applicable to the Services.
- (i) **DBS** the Disclosure and Barring Service, a UK government executive, non-departmental public body sponsored by the UK Home Office.
- (j) **DS** Disclosure Scotland, an executive agency of the Scottish Government.
- (k) **Fees** the fees paid by you or an Applicant for the provision of the Services by Us
- (l) **Personal Data** has the meaning given in Article 4 of the GDPR UK.
- (m) **Software** the online vetting and screening system through which access to the Services is granted to the Customer by Digital Background, and any 3<sup>rd</sup> Party Software. All references to the Services within this document shall include the



Software unless otherwise stated.

- (n) **Working Day** a day (other than a Saturday or Sunday or Bank holiday in England, Scotland or Wales).
- (o) **Working Hours** Monday to Friday inclusive (excluding Bank and Public holidays in England) between the hours of 9.00am - 5.00pm.

## 2. Our contract with you

- 1.4 **Our Contract.** These Terms and Conditions (“**Terms**”) apply to each Application (“**Application**”) by you and supply of Services (“**Services**”) by us to you (“**Contract**”). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.
- 1.5 **Entire Agreement.** The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.
- 1.6 **Language.** These Terms and the Contract are made only in the English language.
- 1.7 **Your Copy.** You should print off a copy of these Terms or save them to your computer for future reference.

## 3 Our Services, Completing an Application and its acceptance

- 3.1 **Services.** These Terms apply both to your online Application to set up a customer account with us and all Services provided by us to you.
- 3.2 **Completing your Application.** When you have logged onto your account via our Website, please follow the onscreen prompts to complete your Application. You may only submit an Application using the method set out on our Website. An Application may only be submitted by a User (“**User**”). Each Application is an offer by you to buy the Services as per the specification or, if different, as specified in the Application subject to these terms.
- 3.3 **Correcting input errors.** Our Application process allows you to check and amend any errors before submitting your Application to us. Please check the Application carefully before confirming it. You are responsible for ensuring that your Application and any information submitted by you is complete and accurate.
- 3.4 **Accepting your Application.** Our acceptance of your Application takes place upon client submission and on which date (“**Commencement Date**”) the Contract between you and us will come into existence. The Contract will relate only to those Services for which payment has been/will be taken.
- 3.5 **If we cannot accept your Application.** If we are unable to supply you with the Services for any reason, we will inform you of this by email and we will not process your Application. If you have already paid for the Services, we will refund or credit you the full amount which you had paid in anticipation of the Services.



#### 4. Cancelling your Application and obtaining a refund

- 4.1 You may cancel an Application and receive a refund in respect of monies actually paid in respect of the Application if we had not processed your request for Services within 5 Working Days.
- 4.2 To cancel the Application, you must advise us in writing.
- 4.3 If you cancel the Application, we will refund you in full for the price you paid for the Services, by the method you used for payment. We may deduct from any refund an amount for the supply of the Services provided for the period up to the time when you gave notice of cancellation in accordance with clause 4.2. The amount we deduct will reflect the amount that has been supplied as a proportion of the entirety of the Application.
- 4.4 Applications that have been passed to third parties such as Disclosure & Barring Service and Disclosure Scotland for processing are non-refundable.
- 4.5 Digital Background are not responsible or liable if the DBS/Police/Disclosure Scotland withdraw an Application and no refund will be available.

#### 5 Our Services and other Ancillaries

- 5.1 **Descriptions and illustrations.** Any descriptions or illustrations on our Website are published for the sole purpose of giving an approximate idea of the Services described in them. They will not form part of the Contract or have any contractual force.
- 5.2 **Compliance with Specification.** Subject to our right to amend the Specification ("**Specification**") (see clause 5.3) we will supply the Services to you in accordance with the Specification.
- 5.3 **Changes to Specification.** We reserve the right to amend the Specification of the Services if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services.
- 5.4 **Reasonable care and skill.** We warrant to you that the Services will be provided using reasonable care and skill.
- 5.5 **Time for performance.** Save as specifically set out in clause 4.1 above, we will use all reasonable endeavours to meet any performance dates specified in the Application, but any such dates are estimates only and failure to perform the Services by such dates will not give you the right to terminate the Contract.
- 5.6 We supply Services Monday to Friday 9.00am to 5.00pm (excluding Saturday and Sunday and Bank Holidays) ("**Working Day**"). You can submit an Application via our Website at any time.

#### 6 Your obligations

- 6.1 It is your responsibility to ensure that:



- (a) the terms of your Application are complete and is fully compliant with all applicable laws;
- (b) you co-operate with us in all matters relating to the Services;
- (c) you provide us with such information and materials we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) you obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (e) you comply with all applicable laws, including health and safety laws including but not limited to those applicable to DBS / Disclosure Scotland;
- (f) the accounts used by a User in respect of the Services are protected by a password that complies with our password requirements;
- (g) the password requirements are not bypassed or neutralised;
- (h) User passwords are not written down in a public place or stored electronically in an unencrypted manner;
- (i) Users do not share their passwords with anyone;
- (j) Users should utilise two factor authentication on the site to further protect their account;
- (k) you advise us by email if you or a User suspects that their password has been compromised; and
- (l) it is your responsibility to manage your Users and remove access when a User no longer requires access to the service.

6.2 If our ability to perform the Services is prevented or delayed by any failure by you to fulfil any obligation listed in clause 6.1 ("**Your Default**");

- (a) we will be entitled to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays performance of the Services. In certain circumstances, Your Default may entitle us to terminate the Contract under clause 15 ("**Termination**").
- (b) we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform the Services; and
- (c) it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.

## 7 Services in UK only

7.1 You may place an Application for the Services from an address outside of the United Kingdom, but the Application must be for performance of the Services to an address in the United Kingdom.



## 8. Charges

- 8.1 In consideration of us providing the Services, you must pay our charges (“**Charges**”) in accordance with this clause 8.
- 8.2 The Charges are the prices quoted on our Website <https://www.digitalbackground.co.uk/pricing/> or by individual agreement in writing at the time you submit your Application.
- 8.3 Digital Background shall be entitled to increase any or all of the Fees giving 30 days' prior written notice to the Customer.
- 8.4 We take all reasonable care to ensure that the prices stated for the Services are correct at the time when the relevant information was entered into the system. However, please see clause 8.5 for what happens if we discover an error in the price of the Services you have applied for.
- 8.5 Our Charges are exclusive of Value Added Tax (“**VAT**”). Where VAT is payable in respect of some or all of the Services and/or any Application, you must pay us such amounts chargeable in respect of VAT, at the applicable rate, at the later of your payment of the Charges or your receipt of a valid VAT invoice from us if additional amounts in respect of VAT are chargeable on the supply of the Services or the Application.
- 8.6 It is always possible that, despite our reasonable efforts, some of the Services on our Website may be incorrectly priced. Where the correct price for the Services is less than the price stated on our Website, we will charge the lower amount. If the correct price for the Services is higher than the price stated on our Website, we will contact you in writing as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Services at the correct price or cancelling your Application. We will not process your Application until we have your instructions. If we are unable to contact you using the contact details you provided during the Application process, we will treat the Application as cancelled and notify you in writing. However, if we mistakenly accept and process your Application where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may cancel supply of the Services and refund you any sums you have paid.

## 9. How to pay

### Pay as you go

- 9.1 Unless specifically agreed otherwise in writing in advance, payment for the Services will be via a Pay as You Go Facility. Payment is taken directly per application by Stripe, or via optional wallet facility.
- 9.2 The optional Wallet facility can be topped up via bank transfer to Digital Background. Funds received will be allocated to the account within two working days.
- 9.3 Once you have made a Prepayment into the Wallet, we will provide those Services requested and deduct the Charges from your Wallet account.
- 9.4 The Prepayment will only be applied against the provision of the Services by us.



- 9.5 Payment for the Services will be deducted from the Prepayment at the time of the Application.
- 9.6 The Wallet Facility does not allow for Applications to be processed without sufficient funds being available in the Wallet at the time of processing.
- 9.7 You can terminate your Wallet Facility by giving us not less than 1 months (“**Notice Period**”) written notice (“**Termination Notice**”) of your intention to terminate. Within 30 days of the end of the Notice Period, we will send you a final account. If the final account shows your Pay as You Go Account :-
- 9.7.1 has an unused Prepayment credited to it, we will return that sum to the bank account or credit card from which it was recovered. We cannot return monies to any other bank account;
- 9.8 Any Prepayment held in the Customer’s Pay as You Go Facility will not attract interest.
- 9.9 We will use reasonable endeavours not to accept Applications where the Pay as You Go Facility has insufficient Prepayments standing to its credit. However this may not always be possible and if there are insufficient funds in your Pay As You Go account for an Application, we reserve the right to submit an invoice in accordance with clauses 9.15 to 9.18 below.

#### **Direct Debit**

- 9.10 If you have applied for a Direct Debit with us and we have agreed for you to pay for the Services by Direct Debit, payment for Services shall be made in accordance with clauses 9.11 to 9.16 below.
- 9.11 We will create invoices on the 5<sup>th</sup> and 20<sup>th</sup> of each month, available online, following the earlier of an Application or the provision of our Services. Payment via Direct Debit will be taken within 10 days of invoice. If the Direct Debit payment fails, we will notify you and you will have 7 days to rectify this. For any failed or cancelled payments, a £25 plus VAT administration fee will be levied by us for each failed payment attempt.
- 9.12 If you fail to make a payment under the Contract by the due date, then without limiting our remedies under clause 15 (“**Termination**”), you will have to pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.12 will accrue each day at 4% a year above the Bank of England’s base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.13 We shall each pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.14 Payment will only be applied against the provision of the Services by us. Such Services to be provided shall be as set out in the Application.
- 9.15 Payment for the Services will be deducted from the nominated account at the time of the Application.



- 9.16 You can terminate your Direct Debit Facility by giving us not less than 3 months (“**Notice Period**”) written notice (“**Termination Notice**”) of your intention to terminate. Within 30 days of the end of the Notice Period, we will send you a final account.

## Periodic Invoices

- 9.17 If you have incurred Charges in excess of the sum in your wallet account (“an Excess Charge”) we will submit periodic invoices no more frequently than daily (or such longer periods as we in our sole discretion shall decide) in arrears in respect of the Services provided in the previous period (“**Invoice**”).
- 9.18 You will pay each Invoice submitted by us:
- (a) within 5 days of the date of an Invoice in respect of Excess Charges; and
  - (b) in full and in cleared funds to a bank account nominated in writing by us; and
  - (c) time for payment shall be of the essence of the Contract.
- 9.19 If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 15, you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.19 will accrue each day at 4% a year above the Bank of England’s base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.20 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 10. Complaints

If a problem arises or you are dissatisfied with the Services, in the first instance please email [governance@digitalbackground.co.uk](mailto:governance@digitalbackground.co.uk) .

## 11. Intellectual property rights

All intellectual property rights in or arising out of or in connection with the Services will be owned by us.

## 12. How we may use your personal information

12.1 We will use any personal information that the User and/or the Applicant provides to us to:

- (a) provide the Services;
- (b) process your payment for the Services; and
- (c) inform you about similar products or Services that we provide or believe may be of interest to you, but you may stop receiving these at any time by contacting us.

12.2 Further details of how we will process personal information are set out in our Privacy Policy – available on our website.



### 13. Limitation of liability: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 We have obtained insurance cover in respect of our own legal liability for claims up to an aggregate total of £1,000,000. The limits and exclusions in this clause reflect the insurance cover we have been able to arrange, and you are responsible for making your own arrangements for the insurance of any excess loss.

13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.3 Subject to clause 13.2, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill;
- (g) loss of or damage to reputation;
- (h) any indirect or consequential loss; and
- (i) we shall not be liable for any loss or damages or expenses of any kind due to inaccurate information on a completed DBS or Disclosure Scotland Application.

13.4 Subject to clause 13.2, our total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to 100% of the total Charges paid under the Application.

13.5 We have given commitments as to compliance of the Services with the relevant specification in clause 5.2. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.6 Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of you having grounds to make a claim in respect of the event and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.7 This clause 13 will survive Termination of the Contract.

### 14. Confidentiality

14.1 We each undertake that we will not at any time disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 14.2.





14.2 We each may disclose the other's confidential information:

- (a) to such of our respective employees, officers, representatives, subcontractors, or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors, or advisers comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

## 15. Termination

15.1 Without limiting any of our other rights, we may suspend the performance of the Services, or terminate the Contract with immediate effect by giving written notice to you if:

- (a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 30 days of you being notified in writing to do so;
- (b) you fail to pay any amount due under the Contract on the due date for payment;
- (c) you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by application of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
- (e) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

15.2 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.

15.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

## 16. Events outside our control

16.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control ("**Event Outside Our Control**").

16.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:



- (a) we will contact you as soon as reasonably possible to notify you; and
- (b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.

16.3 You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 90 days. To cancel, please contact us. If you opt to cancel, we will refund the price you have paid less the charges reasonably and actually incurred us by in performing the Services up to the date of the occurrence of the Event Outside Our Control.

## 17. Non-solicitation

You must not attempt to procure services that are competitive with the Services from any of our directors, employees or consultants, whether as an employee or on a freelance basis, during the period that we are providing the Services to you and for a period of six months following termination of the Contract.

## 18. Communications between us

18.1 When we refer to "in writing" in these Terms, this includes email.

18.2 Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.

18.3 A notice or other communication is deemed to have been received:

- (a) if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
- (c) if sent by email, at 9.00 am the next working day after transmission.

18.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

18.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

## 19. General

### 19.1 Assignment and transfer

- (a) We may assign or transfer our rights and obligations under the Contract to another entity but will always notify you in writing or by posting on our webpage if this happens.
- (b) You may only assign or transfer your rights or your obligations under the Contract to another person if we agree in writing.



19.2 **Variation.** Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

19.3 **Waiver.** If we do not insist that you perform any of your obligations under the Contract, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you or that you do not have to comply with those obligations. If we do waive any rights, we will only do so in writing, and that will not mean that we will automatically waive any right related to any later default by you.

19.4 **Severance.** Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

19.5 **Third party rights.** The Contract is between you and us. No other person (including the Applicant and/or User) has any rights to enforce any of its Terms.

19.6 **Governing law and jurisdiction.** The Contract is governed by English Law and we each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.