

## CHECKIT TERMS OF SERVICE

### Key information

By signing our quote or submitting a purchase order or arranging for the installation of the Equipment or by using Checkit or arranging for additional services to be supplied by purchase order or otherwise or receiving additional services, you agree to be bound by these Terms of Service and those contained in your individual Quote.

These Terms of Service replace our previous terms and conditions. By continuing to use Checkit, you agree to be bound by these Terms of Service in place of all previous Terms of Service.

### **Legal Nature of Subscription**

Your Subscription and any agreement made under these Terms of Service constitutes a contract between you and Checkit Europe Limited (referred to below as **we** or **us** and expressions such as **our** shall be defined accordingly).

Checkit Europe Limited is a company registered in England and Wales (company number 9343487) and its registered office is 21 J J Thomson Avenue, Cambridge, CB3 0FA, England.

We are the operator of the Checkit.net website and the provider of **Checkit**, which is described below.

### **Types of subscription**

Amounts payable under Checkit contracts fall under two categories:

1. One-off charges for goods and services; and
2. Periodical payments for goods and services.

Additional terms (including the Subscription payable) will be set out in your individual Quote which forms part of your contract with us.

### Terms of Service

#### **1. Definitions**

1.1. We use the following definitions in these Terms of Service:

**Accepted Quote** means our acceptance of your Offer based on our Quote as described in clause 2.3;

**Additional Services** means services (including products supplied in order to access the services) provided by us, as part of or related to Checkit, but which are not covered by your Subscription (examples of which are described in clause 5.3) and Excluded Services;

**Active Device Licence** means a licence for a physical device that is used to perform actions on a Workflow in the App in any calendar day;

**Address** means (where applicable) the place at which Equipment is and/or Additional Services are to be provided as specified in the Accepted Quote;

**Alert Manager(s)** means a single/group of Authorised User(s) designated by you prior to Installation to receive notifications related to Checkit Sensors and/or the App via text and/or email and/or telephone and/or other channels;

**App** means the Checkit mobile application;

**App Software** means the software comprising the App;

**Authorised User** means those of your employees and agents that you have authorised to access the Software and who have their own login credentials;

**Basic Training** means 30 minutes basic training for a maximum of 5 staff present during the same 30-minute period;

**Business Day** means any day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Checkit** means the Checkit solution comprising the Software and the Equipment and any applicable workflows and other content as offered by Checkit Europe Limited or Checkit UK Limited and as described in more detail in the Quote and/or the Website;

**Checkit Requirements Document** means all of the information we have requested in Writing, which may be contained in one or more documents and which you must provide us prior to Installation including our list of the minimum information technology and connectivity requirements for the operation of Checkit;

**Checkit Sensors** means any of the devices (handheld, fixed, or otherwise) within Checkit for capturing the Data;

**Cloud Sign Off** means Site Sign Off and/or System Sign Off as the case may be except where Operational Qualification is listed on the Accepted Quote when it means the point at which we make Data available to you via the Cloud Software;

**Cloud Software** means online software applications within Checkit made available to you as part of your Subscription and which define the services available to you as a result;

**Commencement Date** means the first day of the month following the month in which we accept your Offer in accordance with clause 2.3 – e.g., if you accept our Offer on 20 February, the Commencement Date shall be 1 March;

**Data** means the data captured by the App and/or Checkit Sensors, including any Personal Data received and stored by Checkit in the limited circumstances described in clause 18.2;

**Derived Data** means any data (wholly or in part) resulting from the combination or aggregation of Data with other information or Data such that it:

- a) cannot be identified as originating or deriving directly from the Data and cannot be reverse engineered such that it can be so identified; and
- b) it is not capable of identifying any individual.

**Data Protection Laws** means any applicable data privacy laws, which may include the Data Protection Act 2018, the UK GDPR and certain U.S. state privacy laws (as amended or superseded from time to time) depending on the scope of our contract with you;

**Data Sheets** means our definition of the product features as published on the website from time-to-time;

**Due Date** means a date on which payment is due, as set out in clause 14;

**Embedded Software** means the software pre-installed on the Equipment;

**Equipment** means the component parts of Checkit, Checkit Sensors and any other Equipment provided by us as part of your Subscription or purchased by you from us;

**Excluded Services** means services required from us as a result of the matters listed in clause 9.8 or as a result of any breach of your obligations to us;

**GDPR** means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of the domestic law in the United Kingdom by virtue of section 3 of the European (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);

**Index** means the Consumer Price Index as published by the Office of National Statistics;

**Installation** means installation of the Equipment at your premises either by us or by you as described in clause 6;

**Installation Date** means (if we are carrying out Installation) the date agreed by us following your first payment as described in clause 6.8;

**Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**List Price** means our standard price list as revised from time to time a copy of which is available on request;

**Login Details** means a user identification and password which provides access to a User Account;

**Maintenance Releases** means any updated release of the Software which corrects faults and/or upgrades the relevant Software, but excludes any New Chargeable Feature;

**Material** means any advice reports or other documents in any medium or any software of coding or other intangible created or produced by us in connection with Checkit or any Additional Services and supplied to you;

**Minimum Term** means, subject to clause 21, unless otherwise specified in the Quote, a period of three years from the Commencement Date;

**Monitored Equipment** means the relevant equipment at your site(s) in which Checkit Sensors may be installed;

**Multi-Site Subscriptions** means Subscriptions for Checkit where installation is phased in over multiple sites, as so designated in an Accepted Quote;

**New Chargeable Feature** means a feature of Checkit which is not included in your Subscription which we may offer to you from time to time;

**Notice** and **Notice Period** mean twelve (12) months unless otherwise specified in the Quote or otherwise agreed by us and you in Writing;

**Offer** means your offer, made by signature of our Quote, to purchase a Subscription and/or Additional Services;

**One-off Charges** means charges payable for Additional Services or other items which are not covered by Subscription Fees, as set out in these Terms of Service, the Accepted Quote or otherwise;

**Operational Qualification** means, where listed on the Accepted Quote, the procedure which may follow Site Sign Off to test the operation of both Checkit and the Monitored Equipment, resulting in Cloud Sign Off;

**Periodical Payments** means charges payable for a Subscription or for complementary ongoing Additional Services not included within the original Subscription Fee(s);

**Permitted Number** means the permitted number of Active Device Licences or as otherwise specified in the Accepted Quote;

**Personal Data** has the meaning given to it in the Data Protection Laws;

**Pilot** has the meaning given to it in clause 16;

**POM** means the Peace of Mind option (if applicable);

**Quarter** means a three-month period commencing on either 1 February, 1 May, 1 August or 1 November;

**Quote** means the quote for Checkit which we generate and provide to you so that you can make an Offer, including any updated Quote;

**Site Sign Off** has the meaning given to it clauses 6.11 and 6.13;

**SLS** means our service levels sheets as published on the Website from time to time;

**Software** means (as applicable) the Embedded Software, the App Software, the Cloud Software and the Third Party Software;

**Subscription** means your subscription for Checkit, comprised of an Accepted Quote and these Terms of Service;

**Subscription Fee(s)** means the fee or fees payable by you for your Subscription, not being One-off Charges;

**Subscription Period** means the period for which you subscribe to Checkit as set out in clauses 2.4 and 2.5;

**Support Hours** means the hours of 08.30 to 17.00 (UK time) on Business Days or such other applicable support hours that are listed on the Website or in the Accepted Quote;

**System Sign Off** has the meaning given to it in clause 6.13;

**Template Workflow** means our template Workflows from time to time;

**Third Party Software** means any third party software programs including operating systems, antivirus, and firewall programs;

**Training Day** means the provision of training during Support Hours;

**User Account** means a Login provided by us or generated by you to enable use of the Cloud Software in accordance with these Terms of Service;

**Warranty Period** means the relevant period as set out in clause 10.3;

**Website** means the website at <https://www.checkit.net>, or at such other URL from which we make Checkit and/or related products or services available from time to time;

**Workflow** means any workflow created by us using the specification and content provided by you in accordance with clause 5;

**you** means the organisation placing an Order and entering into a contract with us (and **your** shall be construed accordingly); and

**Writing or Written** includes email.

## 2. **Forming a contract**

- 2.1. We will issue you with a Quote in Writing setting out the Subscription Fees and Additional Services and One-off Charges (and any other terms not included in these Terms of Service) for your Subscription to Checkit and/or Pilot, based on your requirements for Checkit as described by you. It is your responsibility to ensure that your requirements are reflected in the Quote and are complete and accurate.
- 2.2. The Quote is only valid for a period of 30 days from its date of issue unless otherwise stated.
- 2.3. The Quote is an Offer which you may accept by signing a copy of the Quote. If you accept the Offer we may accept by signing the Quote, at which point the contract will come into existence and the Quote becomes an Accepted Quote. Your Subscription Period will begin on the Commencement Date.
- 2.4. Your Subscription will continue for the Minimum Term, unless either of us terminates it earlier in accordance with clause 21. On expiry of the Minimum Term, your Subscription shall continue until either of us gives notice to terminate in accordance with clause 21.
- 2.5. These Terms of Service apply to your Subscription and any Additional Services unless and to the extent that the Accepted Quote states otherwise, in which case the terms of the Accepted Quote shall take precedence.
- 2.6. These Terms of Service and the Accepted Quote constitute the entire agreement between you and us and apply to the exclusion of any other terms (contained in a purchase order or any other document) that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. You acknowledge that you have not

relied on any statement, promise or representation whether verbal or in Writing made or given by or on behalf of us which is not set out in the Accepted Quote or these Terms of Service.

### **3. Your Subscription**

3.1. Unless otherwise specified in the Accepted Quote, your Subscription includes:

- Storage of Data in the Cloud;
- Maintenance Releases and/or new versions and information/advice on them at time of release;
- Products in accordance with our Data Sheets and services in accordance with our SLS or clause 4.1 (as applicable);
- Telephone support during Support Hours and email support in accordance with our Data Sheets and SLS;
- Template Workflows, as applicable;
- Where POM applies, continuous replacement parts/units as described in clause 9; and
- Any other services listed in the Accepted Quote as included in your Subscription.

3.2. Your Subscription does not include Additional Services or Excluded Services or any New Chargeable Feature.

3.3. Your Subscription may be strictly limited to the Permitted Number. If you wish to increase the Permitted Number you must request a separate Quote from us. If more than the Permitted Number use Checkit, One-off Charges as per our List Price will be payable or the Subscription Fee shall be increased accordingly by an amount backdated to the Commencement Date, which shall be payable by you.

### **4. Support**

4.1. During the Subscription Period, we will use reasonable endeavours to meet appropriate service levels, provided that you allow us remote access to the Software and the Equipment.

4.2. We shall have no liability nor obligation to provide support in respect of any software, hardware or other parts of your technical infrastructure that is not provided as part of Checkit or where faults result from or are connected with:

- 4.2.1. any operation of Checkit which is not in accordance with our guidelines or instructions;
- 4.2.2. any improper use, operation or neglect of the Software, the Equipment or any other element of Checkit;
- 4.2.3. your failure to implement recommendations in respect of or solutions to faults previously advised by us;
- 4.2.4. any repair, adjustment, alteration or modification of the Software or any other element of Checkit by any person other than us or our authorised agents, without our consent;
- 4.2.5. use of the Software or any other element of Checkit in combination with other software, hardware, or other parts of your technical infrastructure not licensed as part of your Subscription or permitted by us in Writing;
- 4.2.6. failure of any hardware, any network, cabling, peripheral or telecommunications equipment, or failure of the configuration of these components; or
- 4.2.7. the effect of natural disaster or any electrical fault.

### **5. Additional Services**

5.1. Additional Services and the applicable One-off Charges will be listed in the Quote. If they arise after installation the Additional Services and the applicable One-off Charges or Periodical Payments will be notified to you in Writing and the applicable One-off Charges or Periodical Payments will be also notified to you or will be as per our List Price.

5.2. An express or implied request by you in any form for Additional Services will constitute an offer to purchase them; we may accept that offer verbally or in Writing or by performance of the Additional Services.

5.3. Additional Services may include:

- Training over and above Basic Training;
- Consultancy services;

- Data monitoring and analysis services;
- Calibration services;
- Temperature mapping services;
- Maintenance and breakdown services;
- Compliance and risk management services;
- Upgraded and/or bespoke support packages;
- Workflow building/editing services;
- Cloud configuration services, including changing the location hierarchy of the Cloud account, amending users, and modifying the scheduling/rules of the system; or
- Provision of Data extracts in excess of those included as standard in our Data Sheets and/or SLS and any other services for which additional One-Off Charges or Periodical Payments will apply.

5.4. Where your IT infrastructure does not allow Checkit to connect to an appropriate wireless network at a sufficiently functional level, and you do not provide Ethernet ports, we can, on request, and at your risk, facilitate the connection only of the Checkit Equipment to a device that uses the cellular network. All costs, (both initial and ongoing) will be borne by you and One-off Charges will be payable.

5.5. Where we provide Workflows as an additional service:

5.5.1. We will use your content to create Workflows. It is your responsibility to arrange for a suitably qualified and experienced employee or third party contractor to review, approve and sign off Workflows.

5.5.2. Except where we provide consultancy as an Additional Service, you are responsible for providing the specification and all content to be included within your Workflow and you warrant, represent and undertake that such content does not infringe the Intellectual Property Rights or other rights of any third party.

5.5.3. You acknowledge that the content of a Workflow is your responsibility and we shall have no liability to you for the adequacy or otherwise of Workflows for your intended use thereof.

5.5.4. If you use Template Workflows you are responsible for deciding their suitability for your business/use.

5.5.5. In the case of a bespoke Workflow you must give us accurate information and clear instructions and must carefully review, approve and sign them off.

## **6. Delivery and Installation; supply of certain Additional Services**

6.1. We shall be entitled to withhold or delay shipment of any order if you fail to make payment by the Due Date or are otherwise in default of this agreement.

6.2. For deliveries inside the UK, we shall deliver the Equipment to you by the method of our choice. Unless agreed otherwise in advance, we shall pay and be exclusively liable for all costs associated with shipping and delivery of the Equipment to you.

6.3. For deliveries outside the UK, we shall deliver the Equipment Incoterms 2020 to site(s) agreed with you. The relevant Incoterms 2020 Rule shall be set out in the Accepted Quote and will depend on your location. If you do not provide specific shipping instructions we shall ship by the method of our choice. Unless agreed otherwise in advance, you shall pay and be exclusively liable for all costs associated with shipping and delivery including without limitation, freight, shipping, customs charges and expenses, cost of special packaging or handling and insurance premiums incurred by us in connection with the shipment of the Equipment to you. In all documents relating to the shipment, we shall set out that we are the exporter of record from the applicable jurisdiction of export, and you or your agent are the importer of record into the country of delivery.

6.4. We shall deliver the Equipment to the address specified in the Accepted Quote or such other address as we agree ("Delivery Address"). Each delivery of the Equipment will be accompanied by a delivery note.

6.5. The Equipment will be new, refurbished or a combination of both.

6.6. Delivery of the Equipment shall be deemed to have taken place on the next Business Day after dispatch.

6.7. If you fail to accept or take delivery of the Equipment when we or our contractor attempt to deliver it:

- 6.7.1. delivery of the Equipment shall be deemed to have been completed at 09.00 (UK time) on the Business Day following the day of attempted delivery; and
  - 6.7.2. we will store the Equipment and attempt re-delivery of the Equipment until actual delivery has occurred and will be entitled to charge you for all related costs and expenses (including insurance and storage charges).
- 6.8. Where it has been agreed that we will install the Equipment, we will make reasonable endeavours to schedule Installation within four weeks of receipt of your first payment, due on the date you make us an Offer by signing our Quote (see clause 14.4), unless otherwise stated on the Accepted Quote.
- 6.9. You must provide us with a completed and signed Checkit Requirements Document no later than two weeks prior to the Installation Date, return of which signals confirmation that you will cooperate fully with Installation. This will constitute your confirmation that we will be granted appropriate access to your site(s) and system(s) and that you are ready to accept installation (including provision of a suitable number of electricity points and sufficiently strong wireless network signal or Ethernet ports, and relevant access credentials to your network) and the designation of Alert Managers, where applicable, and a single point of contact will be onsite on the Installation Date.
- 6.10. If you fail to provide us with a completed and signed Checkit Requirements Document or such access or cooperation or systems are not ready, or you cancel or postpone the installation less than two weeks prior to the Installation Date, we will be entitled to charge you in line with our standard day rate for Installation. If you notify us that you will be unable to provide access or cooperation more than two weeks prior to the Installation Date, we will use reasonable efforts to reschedule installation.
- 6.11. You will take all necessary steps to ensure that the installation of the Equipment can be completed on the Installation Date and your attention is drawn to clause 15. If you fail to do so and the Equipment cannot be installed you will be charged a One-off Charge at List Price. Once the Equipment has been installed, you will confirm in Writing that installation has taken place ("Site Sign Off"). If you unreasonably fail to do so Installation will be deemed to have been completed when our engineer leaves the site.
- 6.12. For Multi-Site Subscriptions you must provide a completed and signed Checkit Requirements Document for each site.
- 6.13. A schedule of dates for the installation of the Equipment on a site-by-site basis will be agreed in Writing. Once the Equipment has been installed at a particular site, you will confirm in Writing that installation has been completed at that site ("Site Sign Off"). When the Equipment has been installed at all scheduled sites, you will confirm in Writing that the Installation is complete across all sites ("System Sign Off"). If you unreasonably fail to provide Site Sign Off or System Sign Off, Installation will be deemed to have been completed when our engineer leaves the last site.
- 6.14. If you do not provide details of all relevant Alert Managers, where applicable, in the format specified in our Checkit Requirements Document prior to the Installation Date we may still carry out Installation setting by default the contact who received and/or signed the Quote as Alert Manager in the Checkit Cloud Software to receive all notifications (text and/or email or in-App messaging, only) related to the Checkit Sensors until such time as complete details of all relevant Alert Managers are provided to us by you for updating or are updated by you directly in the Checkit Cloud Software as the case may be. Cloud Sign Off will not be prevented in any such instance.
- 6.15. Your Quote will detail whether Operational Qualification is required and if so:
  - 6.15.1. we will inform you of any issue(s) with the Monitored Equipment upon completion of Operational Qualification at which stage you undertake to resolve the issue(s) and inform us upon completion of the same; and
  - 6.15.2. if Operational Qualification highlights any issue(s) with the Checkit Sensors we undertake to resolve these as promptly as possible and inform you upon completion of the same.
- 6.16. Any Operational Qualification actions arising for resolution by you will have no bearing upon Cloud Sign Off.
- 6.17. We may require payment of One-off Charges for installation. We will advise you of any One-off Charges in the Quote. If installation is delayed, prolonged, or postponed by you, we will be entitled to charge additional One-off Charges to cover the additional time spent to install the Equipment and if as a result installation does not take place within 30 days of the original date, we may invoice you as if installation had been completed on that date.

- 6.18. Where you install the Equipment, you must do so in accordance with any relevant user installation guide or other instructions provided to you by us. Installation will be deemed to have occurred within four (4) days of delivery or the Equipment is being used, whichever is the sooner.
- 6.19. Any dates quoted or agreed for delivery or Installation are approximate only, and the time for delivery or Installation is not of the essence. We will use reasonable endeavours to ship the Equipment on the agreed delivery dates.
- 6.20. Where we install the Equipment Basic Training is included. Clause 5 applies to any additional training required.
- 6.21. Unless self-installation is applicable, if you wish to relocate the Equipment or use Checkit at a different address One-off Charges will be payable for relocation and re-installation.
- 6.22. In the case of Additional Services comprising training:
  - 6.22.1. They will be provided on the date and at the time indicated in the Accepted Quote or otherwise in Writing ("Supply Date").
  - 6.22.2. If you fail to provide us with such access or cooperation or systems are not ready, or you cancel or postpone the supply of the services less than 36 hours prior to the Supply Date, we will be entitled to charge you in line with our standard day rate. If you notify us that you will be unable to provide access or cooperation more than 36 hours prior to the Supply Date, we will use reasonable efforts to reschedule the supply of the services.
  - 6.22.3. All performance times mentioned in any negotiations, the Accepted Quote or other documents are approximate and not of any contractual effect. We shall not be liable for any expense, loss or damage whatsoever arising directly or indirectly out of or in any way connected with any delay in performance.
  - 6.22.4. In the case of an Accepted Quote which constitutes an order of a number of Training Days over a specified period any unused days may not be carried forward and must be paid for in full.
  - 6.22.5. We are not obliged to agree to any variation or extension to the services.

## **7. Software**

- 7.1. In consideration of the Subscription Fees paid by you to us, we hereby grant to you for the Subscription Period a non-exclusive, non-transferable, revocable, royalty-free licence to permit the Permitted Number to use and access the Software and receive the Services for your business in accordance with these Terms of Service and your Accepted Quote.
- 7.2. You may only permit the Permitted Number to use and access the Software. You may permit them to do so solely for the intended purpose of (as set out in these Terms of Service) receiving Checkit. We shall monitor your usage and increase and backdate the Subscription Fee to reflect any usage in excess of the Permitted Number.
- 7.3. You undertake not to, and agree to ensure that your Authorised Users do not:
  - 7.3.1. use the Software for any illegal purpose or any purpose other than that for which it is intended;
  - 7.3.2. attempt to copy, modify, record, edit, alter, create derivative works from, frame, mirror for download or translate the Software except to the extent this cannot be prohibited by law in which case you will notify us beforehand and give us an opportunity to provide information so that the above is rendered unnecessary;
  - 7.3.3. reverse engineer, disassemble, decompile, modify or adapt or otherwise attempt to derive source code for the Software in whole or in part except to the extent this cannot be prohibited by law in which case you will notify us beforehand and give us an opportunity to provide information so that the above is rendered unnecessary;
  - 7.3.4. attempt to transmit to or via the Software any information that contains a virus, worm, Trojan, spyware, malware or other harmful or disruptive content or do anything which might interfere with or disrupt the proper operation of the Cloud Software or any computer software, hardware services or networks;
  - 7.3.5. grant or allow access to, share, publish (including to any file sharing website), transmit or distribute the Software or Data to any person or party other than an Authorised User;



- 7.3.6. remove, share, tamper with or circumvent the Login Details or any licence keys relating to the Software, or provide such licence keys to any individual or legal entity other than the Authorised Users, or use the Login Details or any licence keys provided by us to change, modify, delete, interfere with or misuse any files or other data created, owned or provided by us or any third party contained within, or provided as part of Checkit (including the Cloud Software);
- 7.3.7. probe, scan or test the vulnerability of Checkit or attempt to circumvent or hack any user authentication or security controls in respect of Checkit.
- 7.4. From time to time as part of your Subscription we may make available Maintenance Releases and new versions of the Software or New Chargeable Features. We will roll out any Maintenance Release automatically as part of your Subscription, provided you continue to pay the Subscription Fees. We reserve the right to charge additional Periodical Payments for New Chargeable Features which will only become part of your Subscription upon your prior written approval. Where any Maintenance Release, new version of the Software or New Chargeable Feature requires any action on your part, you agree to carry out such action within a maximum of 30 days from receipt failing which we cannot guarantee continued support or future functionality.
- 7.5. Any Maintenance Release, new version of the Software or New Chargeable Feature provided to you shall form part of the Software and shall be subject to these Terms of Service.
- 7.6. We have the right to make any changes to Checkit which are necessary to comply with any applicable law or safety requirement, or which do not materially affect its nature or quality. In the event that a proposed change which shall, in our reasonable opinion, materially affect the nature or quality of Checkit, we shall give you notice in Writing of the proposed change before it is implemented and, if you object to the proposed change, you shall be entitled to terminate the Subscription by providing thirty (30) days' notice in Writing.
- 7.7. You undertake to notify us without delay if you discover any security defects/issues with any aspect of Checkit and to keep any such concerns confidential.

#### Cloud Software

- 7.8. The Cloud Software is made available to you upon either (a) our receipt of the first payment; (b) Site Sign Off, where Installation by us is required; or (c) Cloud Sign Off, where Installation and Operational Qualification is listed on the Accepted Quote and:
  - 7.8.1. where (a) and/or (b) applies the Cloud Software is made available to you to configure and manage the operation of relevant hardware, in particular the Equipment, to store and process the Data and to allow access to it across the internet; and
  - 7.8.2. where (c) applies the Cloud Software will be made available to you by us following our configuration of the relevant hardware, in particular the Equipment, to store and process the Data and to allow access to it across the internet. Such configuration will be based upon information provided by you in the Checkit Requirements Document.
- 7.9. In order to access and use the Cloud Software, you must be connected to the internet (using a supported web browser where 7.9.1 applies). It is your responsibility to ensure that you have such a connection at all times, and we shall have no liability for your inability to use Checkit due to lack of an internet connection or any issues you may have with your internet connectivity, including firewalls, antivirus, and other security software interfering with the operation of Checkit.
- 7.10. You agree to:
  - 7.10.1. keep all the Login Details confidential and not disclose them to any person other than your Authorised Users;
  - 7.10.2. ensure the Authorised Users are aware that the Login Details are confidential, do not disclose their Login Details to any other person and are bound by confidentiality provisions in respect of their use of Checkit no less strict than those contained in these Terms of Service;
  - 7.10.3. notify us immediately if any Login Details are disclosed to any person other than the applicable Authorised User and/or if you suspect or become aware of anything that may compromise the security and/or operation of the Login Details, User Accounts, the Cloud Software and/or Checkit; and

- 7.10.4. upon Written request from us make a declaration in such form as we shall require confirming the number of Authorised Users or teams or addresses / locations or devices using Checkit.
- 7.11. Subject to clauses 7.8 and 7.12, we will use commercially reasonable endeavours to make the Cloud Software available 24 hours a day, seven days a week, except during limited periods of maintenance.
- 7.12. Owing to the nature of the internet, we do not and cannot warrant or guarantee that your use of the Cloud Software will be uninterrupted or error-free. We are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Cloud Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

### Third Party Software

- 7.13. The Software contains Third Party Software and open-source components which are used under licence. A list of those components and the associated licence terms are available on the Website ("Third Party EULAs") here: <https://www.checkit.net/terms-of-service/third-party-software/>
- 7.14. You agree to comply with the licence terms of the Third Party EULAs and any terms and clauses which apply to the use of open-source software components.

## **8. Equipment**

- 8.1. The Equipment will become your property upon either (a) our receipt of payment, in the event that you purchase the Equipment upfront or (b) our receipt of your first payment of Subscription Fees or delivery of the Equipment whichever happens later.
- 8.2. You will be responsible for the risk of loss, theft, damage or destruction of the Equipment from delivery onwards. Checkit Sensors supplied for self-installation by you are supplied on the basis that we have no liability for any costs, claims, liabilities or losses of any nature arising out of or in any way connected with installation.
- 8.3. The Equipment will be delivered with any relevant Embedded Software pre-installed. You must allow us to install Maintenance Releases new versions or New Chargeable Features remotely, automatically, and at any time.
- 8.4. During your Subscription, you agree:
- 8.4.1. to ensure that the Equipment is kept and operated in a suitable environment, used only as part of Checkit and for the purpose for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions as may be provided by us;
  - 8.4.2. to keep the Equipment in a safe and secure environment and to insure it against loss or damage;
  - 8.4.3. to ensure that all Monitored Equipment in which any Checkit Sensors are from time to time installed (or are to be installed) is up to date, suitable for its purpose and properly maintained;
  - 8.4.4. to take such steps (including compliance with all safety and usage instructions as may be provided by us) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment and the manner of its use are at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
  - 8.4.5. to keep the Equipment in good repair at your own expense, (subject to reasonable wear and tear in the course of normal use) and not subject any Equipment to any misuse, use or treatment outside the parameters within which it is intended to operate;
  - 8.4.6. to ensure that Equipment that uses the mains electricity supply is kept switched on and that Equipment powered by batteries is checked regularly via the Checkit system to see whether battery replacement is required and to replace batteries correctly when required according to the specification(s) provided by us;

- 8.4.7. not to factory reset, move or make any alteration to any Equipment or have Checkit Sensors recalibrated by anyone other than our engineers without our prior Written consent;
- 8.4.8. to permit us or our duly authorised representative to inspect the Equipment at all reasonable times either in person or remotely in order to facilitate any diagnostic and/or configuration changes that may be necessary from time to time to support the provision of Checkit;
- 8.4.9. not to use any Equipment for any unlawful purpose;
- 8.4.10. not to reverse engineer, disassemble, decompile, copy, duplicate, modify or adapt the Equipment in whole or in part or to permit any other party to do the same;
- 8.4.11. to retain at all times our proprietary markings on the Equipment; and
- 8.4.12. to notify us immediately if there is any loss, accident or damage caused to the Equipment or arising out of or in connection with your possession or use of it.

## **9. POM: warranty**

- 9.1. This clause 9 applies only to Equipment purchased under the POM subscription.
- 9.2. The Equipment is described in the Quote. We warrant that the Equipment will conform in all material respects with the description in the Quote.
- 9.3. We will use reasonable endeavours to remedy any fault in the Equipment. Any fault identified will need to be confirmed by a qualified and licensed Checkit engineer either on site or on return to base. If no fault is identified or if clause 9.8 applies, One-off Charges at List Price will be payable.
- 9.4. If we are unable to remedy a fault in the Equipment, we will replace the relevant item of Equipment free of charge (subject to clauses 9.8 and 9.13).
- 9.5. The replacement Equipment will be new or refurbished. For environmental reasons we refurbish Equipment wherever possible.
- 9.6. We will use all reasonable endeavours to deliver the replacement Equipment as soon as practicable, but we will not be responsible for any loss or liability caused by any delay in delivery of the replacement, however caused, including by you or any third party (including delivery companies).
- 9.7. If we are unable to replace the Equipment then the Subscription Fees shall be reduced by a proportionate amount representing the value of the faulty item as a proportion of the total value of the Checkit system but you shall not be entitled to terminate your Subscription unless you have given Notice under the provisions of clause 21.1.
- 9.8. The warranty set out in clauses 9.1 to 9.4 shall not apply:
  - 9.8.1. to any faults arising from your misuse of the Equipment or any accidental or deliberate damage to the Equipment whilst it is in your possession or control;
  - 9.8.2. if you fail to follow our installation, operation or maintenance instructions or procedures and/or if you use the Equipment before Operational Qualification or Cloud Sign Off has been completed;
  - 9.8.3. where the fault arises from the use of the Equipment in conjunction with equipment not provided by us (or on our behalf);
  - 9.8.4. to any cosmetic damage which does not affect the functionality of the Equipment;
  - 9.8.5. to any damage caused by events outside our reasonable control; or
  - 9.8.6. from the date you give Notice to terminate your Subscription (unless Notice is given during the Minimum Term).

and in any such case you will be liable to pay for any replacement Equipment required, the cost of installation and any Additional Services required at List Price.

- 9.9. We may replace fully functioning Equipment in order to ensure optimal performance. We may replace:
- 9.9.1. Checkit Sensor(s) to take account of their calibration requirements (if any); and
  - 9.9.2. all other items of Equipment at intervals to take account of their expected useful lives.
- 9.10. In the case of Checkit Sensors replaced under clauses 9.4 or 9.9 we will supply, free of charge, the Checkit Sensors/Equipment for you to make the replacement yourself and return the replaced Equipment to us under clause 9.11. Unless stated otherwise in the Accepted Quote if you wish us to effect the replacement this will constitute an Additional Service and One-off Charges will apply.
- 9.11. We are entitled to supply replacement Equipment (including any handheld devices) to you under clause 9.9 either as new or refurbished units. For environmental reasons we refurbish Equipment wherever possible. You will be responsible for registering the replacement Equipment with the Cloud Software. We will provide assistance with this on request subject to payment of One-off Charges.
- 9.12. You agree to return to us, at your own expense, any existing replaced Equipment in your possession (whether fully functioning or not) within two weeks after receiving the replacement Equipment, at which point ownership of the existing replaced Equipment will transfer to us.
- 9.13. If you continue to use or fail to return the relevant Equipment in accordance with clause 9.12:
- 9.13.1. we will not be responsible for the performance of such Equipment from the date by which the Accepted Quote indicates (or we indicate) the Equipment should have been returned; and
  - 9.13.2. if we have sent any replacement Equipment to you we will be entitled to charge you the List Price of the unreturned Equipment.

## **10. One-off Charges Equipment: warranty**

- 10.1. This clause 10 applies to all purchases of Equipment via One-off Charges.
- 10.2. We warrant that the Equipment will conform in all material respects with the description in the Quote.
- 10.3. We will use reasonable endeavours to remedy free of charge any fault in the following Equipment arising during the applicable warranty period (calculated from the date of delivery) set out below:

<b>Equipment</b>	<b>Warranty Period</b>
Checkit Probe (handheld)	6 months
Checkit Sensors	24 months
All other items of new Equipment	12 months
All items of repaired service replacement Equipment	6 months

- 10.4. Where we are unable to remedy a fault arising during the applicable Warranty Period, we will replace the relevant item of Equipment free of charge.
- 10.5. The replacement items of Equipment provided under clause 10.4 will be new or refurbished. For environmental reasons we refurbish Equipment wherever possible.
- 10.6. We will use all reasonable endeavours to deliver the replacement Equipment as soon as practicable, but we will not be responsible for any delay in delivery of the replacement however caused including by you or third party agents (including delivery companies).
- 10.7. Where an item of Equipment is repaired or replaced under clauses 10.3 or 10.4, we will offer further repair/replacement until the later of (i) the end of the original Warranty Period; and (ii) three months from the date of such repair/replacement.

10.8. The warranty set out in clauses 10.2 to 10.4 shall not apply:

10.8.1. to any faults arising from your misuse of the Equipment or any accidental or deliberate damage to the Equipment whilst it is in your possession or control;

10.8.2. if you fail to follow our installation, operation or maintenance instructions or procedures and / or if you use the Equipment before Operational Qualification or Cloud Sign Off has not been completed;

10.8.3. where the fault arises from the use of the Equipment in conjunction with equipment not provided by us (or on our behalf);

10.8.4. to any cosmetic damage which does not affect the functionality of the Equipment;

10.8.5. to any damage caused by events outside our reasonable control (for example, any of the events referred to in clause 24);

and in any such case you will be liable to pay for any replacement Equipment required, the cost of installation and any Additional Services required at List Price.

10.9. Equipment, which is out of warranty, will be replaced upon payment of a One-off Charge.

## **11. Calibration**

11.1. Checkit Sensors include factory built calibrated components.

11.2. Checkit Europe Limited is a UKAS-accredited Calibration Laboratory able to provide calibration services either directly or indirectly. Immediately after Site Sign Off or Cloud Sign Off, as applicable, if this has been specifically agreed with you in the Accepted Quote or otherwise in Writing, upon written request we will provide or procure digital certification of UKAS ISO17025 single-point or three-point calibration for our Equipment.

11.3. Annual recalibration is available for an additional fee.

## **12. The App**

12.1. If your Subscription includes the App this clause applies.

12.2. The ways in which you can use the App and Documentation may also be controlled by the Google Play rules and policies [https://play.google.com/intl/en-us\\_us/about/play-terms.html](https://play.google.com/intl/en-us_us/about/play-terms.html) and the Google Play rules and policies will apply instead of these terms where there are differences between the two. In compliance with Google Play our Checkit privacy policy is at <https://www.checkit.net/privacy-policy/>.

12.3. The ways in which you can use the App and Documentation may also be controlled by the App Store rules and policies <https://www.apple.com/uk/legal/internet-services/itunes/uk/terms.html> and App Store rules and polices will apply instead of these terms where there are differences between the two.

- 12.4. The App can be used on most standard Android and iOS-based devices. Details of the memory and operating system requirements are on the Website.
- 12.5. Authorised Users may download a copy of the App onto handheld devices and view, use and display the App and use Checkit on such devices and receive and use any free supplementary software code or update of the App incorporating "patches" and corrections of errors as we may provide to you.
- 12.6. You must own (or have control over the content of) the device onto which the App is downloaded. The security of the Data that you collect or view on the device will depend on you ensuring the device is appropriately updated and secured, which is your responsibility.
- 12.7. Certain Services will make use of location data sent from your devices. You can turn off this functionality at any time by turning off the location services settings for the App on the device. If you use these Services, you consent to our transmission, collection, retention, maintenance, processing and use of your location data and queries to provide and improve location-based and road traffic-based products and services. You may stop us collecting such data at any time by turning off the location services settings on the device; if you do this or disable other required permissions the full App functionality will not be available.

### **13. Charges**

- 13.1. Subscription Fees and One-off Charges are set out in the Accepted Quote or otherwise in Writing. Subscription Fees are payable annually by direct debit unless a different payment method is specified in the Quote.
- 13.2. For Multi-Site Subscriptions we shall issue one invoice to cover all relevant sites. We shall not invoice on a per-site basis.
- 13.3. If you apply standard payment terms to all supplier invoices received, Checkit may invoice Subscription Fees up to 90 days before the Due Date in order to ensure that payment is received on the Due Date.
- 13.4. You acknowledge that all Subscriptions are calculated on the basis that they are payable in advance and therefore to the extent that they are not paid in advance your Subscription may be increased under clause 13.7.3(iv).
- 13.5. Subject to clause 13.2 Subscription Fees payable by direct debit will be invoiced on or about the Due Date.
- 13.6. Any One-off Charges will be calculated as per List Price at the time the relevant services and/or Equipment are provided, unless included as part of the Accepted Quote.
- 13.7. We reserve the right to increase:
  - 13.7.1. Our List Prices for One-off Charges at any time;
  - 13.7.2. the Subscription Fees on an annual basis with effect from each anniversary of the Due Date in line with the percentage increase in the Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Due Date and shall be based on the latest available figure for the percentage increase in the Index; and
  - 13.7.3. the Subscription Fees (or One-off Charges specified in the Accepted Quote) from time to time to reflect the delivery to you of (a) a New Chargeable Feature or (b) any increase in the cost of providing Checkit or the Additional Services that is due to:
    - (i) any factor beyond our reasonable control (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials or cloud service provider charges, and other manufacturing costs);
    - (ii) any request by you to change the delivery date(s), quantities or types of Equipment ordered;
    - (iii) any delay or increase in costs caused by your failure to give us adequate or accurate information or instructions;
    - (iv) your failure to pay the Subscription Fees on or in advance of the Due Date;

- (v) variations or extensions to the Additional Services or the time when they are to be provided;
- (vi) work to be carried out other than during Support Hours;
- (vii) any change in the risk profile of the address or environment where Checkit or Additional Services are to be provided;
- (viii) any increase in the Permitted Number over that specified in the Accepted Quote; or
- (ix) use of Checkit by someone who is not an Authorised User (where your Subscription is calculated by reference to a number of named users), use in excess of the Permitted Number or other use of Checkit by you which is outside the scope of the basis on which the Accepted Quote was prepared or otherwise in breach of these Terms of Service.

13.8. Where clause 13.7.3 applies, Checkit shall give notice in Writing in advance of the price increase and, if the increase shall take place during the Minimum Term, Checkit shall give no less than 30 days' notice of the increase. Checkit shall provide a short explanation for the increase but it shall not provide information on an open book basis or provide any information which is in any way commercially sensitive to Checkit. If we exercise our right under this clause we shall, at all times, act reasonably.

13.9. If, at any time during the Subscription Period, any item of Equipment is damaged due to your misuse, including where it becomes unusable as a result of such damage, you will remain liable to continue to pay the Subscription Fees in accordance with these Terms of Service and will be obliged to place an order and pay One-off Charges in respect of any replacement Equipment required.

13.10. All amounts payable by you under these Terms of Service are exclusive of amounts in respect of (i) sales and use taxes assessed by any taxing authority in the jurisdiction(s) in which you are physically located and take delivery of the Equipment including value added tax chargeable from time to time ("VAT") which is payable in addition; and (ii) shipping and handling fees, which unless otherwise agreed or clause 6.2 applies, will be your responsibility.

## **14. Payment**

14.1. You must pay all sums due to us within 30 days of their respective Due Dates. Payment is due whether or not a purchase order has been issued.

### One-off Charges

14.2. Unless otherwise stated in the Accepted Quote the Due Date for all One-off Charges (e.g. Installation, Training, etc.) is the Commencement Date.

14.3. One-off Charges may be collected by direct debit where direct debit is an authorised payment method.

### Periodical Payments

14.4. Unless otherwise stated in the Accepted Quote the Due Date for your first Periodical Payment (e.g. Subscription Fee) is the Commencement Date.

14.5. For subsequent payments the Due Date is the anniversary of the Commencement Date.

14.6. When you make an Offer, you must provide us with a signed Quote and/or approved purchase order information acceptable to us and any other relevant valid, up-to-date and complete contact and billing details.

14.7. Without limiting any other right or remedy of ours, if you fail to make any payment due to us by the Due Date:

14.7.1. we may suspend your access to the Cloud Software and if your failure to make payment continues for more than (2) two months beyond the Due Date we may destroy your Data held on the Cloud Software;

14.7.2. we may charge interest on the overdue amount at the statutory rate or, if higher, the rate of 4% per annum above the then current base rate of HSBC Bank accruing on a daily basis from the Due Date until the date of actual payment, whether before or after judgment, and compounding quarterly; and

14.7.3. we shall have a general lien on all work done and property belonging to you and such lien shall be exercisable in respect of all sums due from you to us.

14.8. You shall pay all amounts due under these Terms of Service in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

## **15. Your obligations**

15.1. You will at all times:

- 15.1.1. ensure that your IT network and services and plug points are available and comply with the relevant specifications required for the Equipment and Software to operate, as set out in the Checkit Requirements Document, and these Terms of Service and/or the Website and that firewalls/antivirus/other security software do not block Maintenance Releases, new versions or New Chargeable Features;
- 15.1.2. be solely responsible for procuring and maintaining your IT network connections and telecommunications links and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet and for setting up Checkit system correctly (in accordance with our instructions);
- 15.1.3. prepare your premises and systems for the delivery of the Equipment and supply of any Additional Services in accordance with our Checkit Requirements Document;
- 15.1.4. set up on your IT system appropriate permissions reports and other required configurations of the Checkit system;
- 15.1.5. be responsible for all activities carried on by any person who accesses or otherwise uses Checkit on your behalf using Login Details allocated to your Authorised Users;
- 15.1.6. monitor and manage the Authorised Users' use of Checkit and ensure your and the Authorised Users' compliance with these Terms of Service;
- 15.1.7. co-operate with us in all matters relating to Checkit and any Additional Services;
- 15.1.8. provide us, our employees, agents, consultants and subcontractors, with safe access to your premises, office accommodation and other facilities, and remote and local network access, and to the Equipment, as reasonably required by us to provide Checkit and any Additional Services;
- 15.1.9. provide us with such information and materials as we may reasonably require to supply the service, and ensure that such information is accurate in all material respects and promptly report any faults;
- 15.1.10. obtain and maintain all necessary licences, permissions and consents which may be required for you to receive and use Checkit before the start of your Subscription Period;
- 15.1.11. ensure that you are familiar and are able to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Equipment;
- 15.1.12. ensure that you have adequate security procedures in place to protect the Equipment and the Software including restricting physical and logical access to Authorised Users only, ensuring that the Equipment is (where relevant) stored in locked premises and that you have appropriate protections in place in respect of your IT network;
- 15.1.13. pay all monies due on their Due Date.



- 15.2. You shall not, and shall procure that your Authorised Users do not:
- 15.2.1. load any applications on to the Equipment other than the Software;
  - 15.2.2. breach or fail to comply with these Terms of Service or any Third Party EULA;
  - 15.2.3. modify, manipulate or change the Data or Equipment in any way, or grant access to the Data to any person other than an Authorised User;
  - 15.2.4. provide access to Checkit to any individual or legal entity other than the Permitted Number;
  - 15.2.5. use Checkit in contravention of any applicable law; or
  - 15.2.6. use Checkit outside the scope of the basis on which the Accepted Quote was prepared.
- 15.3. If our performance of any of our obligations is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation ("Customer Default"):
- 15.3.1. we may suspend provision of Checkit and/or Additional Services until you remedy the Customer Default;
  - 15.3.2. we will not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to provide Checkit or Additional Services; and
  - 15.3.3. you will indemnify us against any costs or losses we sustain or incur arising directly or indirectly from the Customer Default.
- 15.4. You will indemnify us against all costs and losses of any nature arising out of or in any way connected with any breach of your obligations to us including all legal and other costs of recovery.

## **16. Pilot**

- 16.1. From time to time, we may at our sole discretion offer a time limited, chargeable 'Pilot' ("Pilot").
- 16.2. The Pilot will be approved by you at the appropriate level of authority. If offered by us and accepted by you, and unless stated otherwise in the Accepted Quote, the Pilot shall continue for the period agreed ("Pilot Period") in the project charter ("Project Charter").
- 16.2.1. The rollout of Checkit post- Pilot Period ("Rollout") will be discussed and agreed in principle prior to the Accepted Quote and will form part of the consideration for the Accepted Quote. Details of the proposed Rollout will be included in the Project Charter.
  - 16.2.2. The Project Charter shall also include the scope and success criteria of the Pilot as agreed by us and you and shall form part of the contract together with these Terms of Service. In case of conflict the Project Charter shall prevail.
  - 16.2.3. The success criteria ("Success Criteria") will be determined based on financial and/or operational considerations and justification by you and agreed with us. The Pilot will only commence upon the proper definition and justification of the Success Criteria.
  - 16.2.4. The Pilot may be extended if agreed by you and us but any period of extension will be chargeable at a pro-rated amount of the initial Pilot fees, or other agreed amount.
- 16.3. You will meet regularly with us to discuss and provide information and feedback on i) use or operation of Checkit; ii) changes, or suggestions for changes, to the Pilot (any intellectual property rights pertaining to such changes will be assigned by you to us in accordance with clause 17) and; iii) business benefits and positive impact of Checkit so that we can complete our analysis of the Success Criteria.
- 16.4. If you take part in the Pilot, then Checkit will be provided to you on the terms set out in the Project Charter and these Terms of Service, except that:

- 16.4.1. Checkit is provided without any term, clause or warranty (whether express or implied) of quality, functionality or performance during the Pilot;
  - 16.4.2. Clauses 4, 9 and 10 shall not apply during the Pilot; and
  - 16.4.3. special provisions relating to charges as set out in the Accepted Quote will apply during the Pilot, unless the Equipment is lost or damaged due to an accident or your misuse, even if it becomes unusable as a result of such damage, in which case clause 13.6 shall apply.
- 16.5. Subject to clause 16.6 and unless you return the Equipment to us at your own expense by the end of the Pilot Period, the Rollout will commence and your Pilot will automatically become a full annual payment frequency Subscription with the Minimum Term commencing and the Subscription Fees becoming payable at the end of the Pilot Period.
- 16.6. On expiry of the Pilot, you will attend a closing meeting to review the Success Criteria and will provide all relevant information necessary to us in order that we may make an informed decision.
- 16.6.1. Unless specified otherwise in the Quote and subject to the Pilot reasonably meeting the Success Criteria, the Rollout and Minimum Term will commence at the end of the Pilot Period and the Subscription Fees and One-off Charges payable will be at the rates specified in our List Price in force at the end of the Pilot Period.
  - 16.6.2. Subject to clause 16.6.1, if you choose not to commence the Rollout at the end of the Pilot for any reason there will be a termination fee amounting to three months' value of the Subscription Fees relating to the pre-defined scope as set out in the Project Charter, and One-off Charges and ancillary costs.
- 16.7. If for whatsoever reason, your contract does not become a Subscription then your use of Checkit will automatically terminate and you will no longer have access to Checkit.
- 16.8. Clauses 21.6 to 21.8 will apply where you return the Equipment to us by the end of the Pilot Period and the Pilot automatically expires.

## **17. Intellectual property rights.**

- 17.1. All Intellectual Property Rights in Checkit are owned by us or our third party licensors. You will not acquire any right, title or interest in or to the Intellectual Property Rights in Checkit other than the licence to use Checkit in accordance with these Terms of Service.
- 17.2. Any Intellectual Property Rights owned by you prior to entering this contract which may be used by us in order to fulfil your specific requirements will remain solely your property.
- 17.3. Any software, coding, bespoke dashboards, Workflows and/or bespoke analysis created by us in order to fulfil your specific requirements is owned solely by us and we may use it in future for any purpose without restriction including licensing to other customers.
- 17.4. Unless otherwise agreed in Writing you will not acquire any Intellectual Property Rights in any Material.
- 17.5. You grant Checkit a sole, irrevocable, worldwide and royalty free licence to create or use Derived Data for any legal business purpose including product development and analytical purposes.

## **18. Data and Data Processing**

- 18.1. You will own all right, title and interest in and to all of the Data and shall have sole responsibility for its legality, reliability, integrity, accuracy and quality. You are the Data Controller of the Data, to the extent it consists of Personal Data.

- 18.2. We require Personal Data about your Authorised Users (comprising identifiers such as names, email addresses and mobile telephone numbers) to be stored on our systems so that you can access it and to enable you to instruct us to set up reports for you using such Personal Data. To that limited extent only we process Personal Data in connection with your Subscription or Additional Services as your Data Processor. Except as expressly set out in this clause 18.2, you will not transfer, process or otherwise transmit any Personal Data to us or request, authorise or permit us to process any Personal Data. To the limited extent that we are your Data Processor, as described above, you may only give us instructions to process such Personal Data within those limits and may not instruct us to process Personal Data such that you or we may breach Data Protection Laws and our further obligations are set out in clause 18.
- 18.3. You also agree to us accepting and using the Data if required to provide Additional Services or in order to assist you with your use of Checkit but accept that we have no duty to do so in the latter case.
- 18.4. You further agree and acknowledge that we may, for our own purposes, process any of the Data which is Personal Data by anonymising it so that it is no longer capable of identifying individuals, and further process it for any legal business purpose including but not limited to product development, benchmarking, research and marketing purposes.
- 18.5. You agree to allow us to audit your and/or the Authorised Users' use of Checkit to ensure that these Terms of Service are being complied with. We will give you reasonable advance notice if we wish to carry out an audit. This audit right does not entitle us access to confidential intellectual property or financial, payroll, personnel or other confidential records that belong to you that do not relate directly to the Subscription or Additional Services.
- 18.6. Without limiting any other provision of this clause 18, you are responsible for and undertake to obtain all necessary consents from your users and Authorised Users with respect to the processing and storage of Data by you or by us, including their explicit consent (in accordance with Article 49 of the GDPR), after having been informed of the risks, of the repatriation of Data from storage locations in other jurisdictions or if you are based outside the UK the risks of the transfer of Data to the UK.
- 18.7. Data will be stored online and/or offline as described in our Data Sheets and/or SLS. Where applicable, longer storage periods are available for One-off Charges as per our List Price. You agree to our use of Amazon Web Services or Microsoft Azure as our sub-processor or such other sub-processor as we shall select subject to us entering into a suitable contact with any such other sub-processor.
- 18.8. Checkit is not a data loss insurance policy. In the event of any loss or damage to Data, your sole and exclusive remedy shall be for us to use reasonable commercial endeavours to restore the lost or damaged Data from the latest back-up of such Data we maintain. We will not be held responsible for any loss, destruction, alteration or disclosure of Data caused by any third party. Data stored by us may be held in the UK and other jurisdictions in accordance with applicable laws.
- 18.9. We will use our reasonable endeavours to ensure that appropriate safety and security services and procedures are maintained and enforced to prevent unauthorised access or damage to the Data or the Cloud Software.
- 18.10. You agree to indemnify us, our employees, subcontractors and agents against all losses, liabilities, damages, fines, penalties and expenses (including reasonable legal fees) incurred by us arising from any breach by you, your employees and agents of this clause 18 and/or the Data Protection Laws.
- 18.11. The terms "Data Controller", "Data Processor" and "Data Subject" have the meanings given to them in the Data Protection Laws.
- 18.12. To the limited extent that we are your Data Processor we agree to:
- 18.12.1. process that Personal Data only on your Written instructions as contained in these Terms of Service unless we are required by the laws of any jurisdiction to which we are subject to process Personal Data ("Applicable Laws"). Where we are relying on Applicable Laws as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
- 18.12.2. ensure that we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological

development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 18.12.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 18.12.4. except by way of repatriation to the country in which you supplied it, not transfer any Personal Data outside of the United Kingdom or the European Economic Area unless the following clauses are fulfilled:
  - you or we have provided appropriate safeguards in relation to the transfer;
  - we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - we comply with reasonable instructions notified to us in advance by you with respect to the processing of the Personal Data.
- 18.12.5. assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 18.12.6. notify you without undue delay on becoming aware of a Personal Data breach;
- 18.12.7. at your Written direction, delete or return Personal Data and copies thereof to you on termination of this agreement unless required by Applicable Laws to store the Personal Data; and
- 18.12.8. maintain complete and accurate records and information to demonstrate our compliance with this agreement.

## **19. Confidentiality**

- 19.1. We take confidentiality and data security extremely seriously and expect our customers to do the same. A party (whether us or you) ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives, and any Data, which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. Subject to clauses 19.2 and 19.3, the Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 19.2. The restrictions in clause 19.1 shall not apply to information that:
  - 19.2.1. is or becomes publicly known other than through any act or omission of the Receiving Party;
  - 19.2.2. was in the Receiving Party's lawful possession before its disclosure by the Disclosing Party;
  - 19.2.3. is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or
  - 19.2.4. Is independently developed by the Receiving Party, which independent development can be shown by Written evidence.
- 19.3. Nothing in these Terms of Service shall restrict any disclosure of confidential information required by law or a court order.
- 19.4. This clause 19 shall survive the termination of the Subscription or any contract to provide Additional Services.

- 19.5. Notwithstanding the provision of clause 19.1, if you are a facilities management company (or similar) you agree that we may market Checkit direct to your customers' businesses (other than those which you manage) but we will maintain confidentiality in respect of the Data.
- 19.6. You agree that we may identify you as a user of Checkit and that we may use your name and logo in sales presentations and marketing material whether online or otherwise. If your name or logo are registered trademarks this constitutes your consent under section 9 of the Trade Marks Act 1994.
- 19.7. You acknowledge that we may undertake work for your competitors and consent to us doing so, relying upon the confidentiality obligations under this clause 19.

## **20. Making changes to your Subscription**

- 20.1. You may request an upgrade (e.g., additional Equipment and/or services) to your Subscription at any time. We will issue a new Quote for your upgraded Subscription, which will begin as soon as we accept your Offer.
- 20.2. Upgrading your Subscription in the first three (3) months of the Subscription will not extend the Minimum Term unless specified in the new Accepted Quote. After this period any upgrade(s) to your Subscription will, unless specified in the new Accepted Quote, result in the Minimum Term restarting on the date of the new Accepted Quote.
- 20.3. You may request a downgrade to your Subscription by giving us the required Notice. If we accept the request, we will issue an amended Accepted Quote to confirm your downgraded Subscription and the Subscription Fees shall be reduced on expiry of the Notice Period or at the end of the Minimum Term, whichever occurs later.
- 20.4. If your Equipment needs to be moved we must be informed in advance. You will be subject to a One-off Charge for the reinstallation of the Equipment.

## **21. Ending your Subscription**

- 21.1. You or we may end your Subscription or terminate any contract to provide Additional Services immediately by giving Written notice if:
  - 21.1.1. the other commits a material breach of its obligations and does not remedy that breach (if it is possible to do so) within thirty (30) days after being given Written notice of the breach; or
  - 21.1.2. the other suspends, threatens to suspend or ceases or threatens to cease to carry on all, or substantially the whole of its business, or has become insolvent or gone into liquidation or administration or has been otherwise unable to meet its debts as they fall due or has suffered any equivalent or similar action in consequence of debt.
- 21.2. We may end your Subscription at any time by giving you three months' notice in Writing, with such notice to expire no earlier than the end of the Minimum Term.
- 21.3. Where we have the right to terminate your Subscription or to terminate any contract to provide Additional Services under any of the circumstances set out in this clause 21, we may instead suspend our provision of Checkit or Additional Services to you (including by suspending your access to the Software and/or all further deliveries of Equipment).
- 21.4. You may terminate your Subscription at any time by giving us Notice, such Notice to expire no earlier than the end of the Minimum Term. From the date you give Notice you will not be eligible to receive any further replacement Equipment under clause 9 unless replacement is required during the Minimum Term.
- 21.5. Cancelling a direct debit does not constitute Notice of termination and your Subscription will for the avoidance of doubt continue until Notice is served by you.
- 21.6. On termination of your Subscription:
  - 21.6.1. your right to use the Software, other than Embedded Software in Equipment you have purchased, will automatically end;
  - 21.6.2. you shall immediately pay to us:

- (i) the Subscription Fees for the remainder of the Minimum Term (if applicable); and
- (ii) all of our outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has yet been submitted, we may submit an invoice, which shall be payable by you immediately on receipt.

21.6.3. we will on request download or provide for download one copy of all Data held in the Cloud Software and issue this to you in a suitable file format, provided all payments referred to in clause 21.6.2 have been received by us. After we have provided you with a copy of such download or where no request has been made within two (2) months of your Subscription coming to an end we will have no obligation to retain any of the Data or provide you with copies of any such Data.

21.7. Any clauses that expressly state they will survive termination of your Subscription will do so as will any which by their nature are intended to survive.

21.8. Any rights and remedies accrued at termination (including the right to claim damages for any breach of the Terms of Service at or before termination) will not be affected.

## **22. Limitation of Liability**

22.1. Checkit is not an insurance policy and does not obviate the need for you to have in force appropriate insurances for your business.

22.2. You acknowledge and agree that we owe you no duty of care in relation to your use of the Data (or your use of Checkit) and that we have no obligation to report to you any misuse of the Checkit system by your employees or agents.

22.3. Nothing in these Terms of Service shall limit or exclude our liability to the extent that such liability cannot be limited or excluded by law, including liability for:

22.3.1. death or personal injury caused to you by our negligence; or

22.3.2. fraud or fraudulent misrepresentation.

22.4. Subject to clause 22.3:

22.4.1. we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any of the following losses, whether direct or indirect arising under or in connection with your Subscription or these Terms of Service or otherwise:

(i) any loss of profit, revenue, business, contracts, or anticipated savings

(ii) loss of use;

(iii) loss of goodwill; or

(iv) loss of or damage to, or unauthorised access to, the Data.

22.4.2. we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with your Subscription or these Terms of Service or otherwise; and

22.4.3. subject to clause 22.4.4 our total liability to you in respect of all other losses arising under or in connection with your Subscription or these Terms of Service or otherwise, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total Subscription Fees paid in the 12 months preceding the date that such loss arises; and

22.4.4. this clause only applies to Additional Services comprising consultancy or training: our total liability to you in respect of all other losses arising under or in connection with such Additional Services, whether in contract tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the One off Charges paid for such Additional Services.

22.5. Except as expressly and specifically provided in these Terms of Service, all warranties, clauses and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded. In particular, we give no term, clause or warranty relating to quality, fitness for a particular purpose, functionality or performance save as expressly set out herein.

### **23. Your indemnity**

- 23.1. Subject to clause 22, you accept all liability for any third party claim or action for death, personal injury or damage to property arising out of or in connection with your (or your employees, agents or Authorised Users') use of Checkit or Additional Services, where such use is not in accordance with these Terms of Service ("Claim").
- 23.2. You agree to fully indemnify us from and against all claims, actions, proceedings, losses, liabilities, damages, expenses and costs (including court costs and reasonable legal fees) incurred by, or awarded against us as a result of, or in connection with, any Claim.
- 23.3. If any third party makes a Claim, or notifies an intention to make a Claim, you agree to provide such assistance to us as we may reasonably require in order to investigate and resolve such Claim including giving us and our professional advisers access to your premises and your officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within your power or control, so as to enable us and our professional advisers to examine them and to take copies.

### **24. Force Majeure**

- 24.1. Neither party shall be in breach of this agreement nor liable for delay in performing or failure to perform, any of its obligations under this agreement contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a "Force Majeure Event") and such non-performance or delay could not have been avoided by the performing party through reasonable commercial endeavours. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.
- 24.2. The performing party shall use all reasonable efforts to mitigate the effect of the Force Majeure Event on the performance of its obligations.

### **25. Changes to these Terms of Service**

- 25.1. We may update these Terms of Service from time to time (but not so as to vary, within the Minimum Term, the financial terms contained in the Accepted Quote). The updated version of these Terms of Service shall be available on our Website. We will give you at least thirty (30) days' notice in Writing of any material change and the change will become effective after the expiry of the thirty (30) day period. The updated version of these Terms of Service supersedes all prior versions. If you do not agree to the updated version of these Terms of Service you must stop using Checkit immediately.

### **26. General clauses**

- 26.1. We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Subscription and/or these Terms of Service and may transfer, subcontract or delegate in any manner any or all of our obligations under the Subscription/the Accepted Quote and/or these Terms of Service to any third party.
- 26.2. You may not, assign, transfer, charge or subcontract your Subscription or your rights or obligations under it without our prior Written consent. If you sell the device on which the App is installed you must remove the App from it.
- 26.3. You must obtain our prior Written consent to any change in ownership or control of you, such consent not to be unreasonably withheld.
- 26.4. Any notices must be in writing and sent by:
- 26.4.1. prepaid first-class post or commercial courier to the registered office or principal place of business; or
- 26.4.2. sent by email to the other party's main email address as set out in the Accepted Quote.

- 26.5. A notice will be deemed to have been received, if sent by prepaid first-class post, at 9.00 am UK time on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, on the next Business Day after transmission provided no error report or "out of office" auto-response is received by the sender in response to such transmission. Satisfactory proof of delivery must be retained by the sender.
- 26.6. If you wish to end your Subscription by giving Notice it must be given in Writing in accordance with clause 26.4.
- 26.7. Clauses 26.4 and 26.5 shall not apply to the service of any proceedings or other documents in any legal action.
- 26.8. A waiver of any right under these Terms of Service is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under these Terms of Service or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 26.9. If a court or any other competent authority finds that any provision of this contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions (or the other part of the provision in question) of these Terms of Service shall not be affected.
- 26.10. A person who is not a party to these Terms of Service shall not have any rights under or in connection with them.
- 26.11. In these Terms of Service any words following the word "including" "include" "for example" or any other similar expression shall be considered as illustrative and shall not limit the sense of the words/descriptions following those words.
- 26.12. The headings in these Terms of Service are included for ease of reference only and shall not affect their construction.
- 26.13. These Terms of Service and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) ("Disputes") will be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.