

CHECKIT TERMS OF SERVICE

Key information

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

Legal Nature of Subscription

Your Subscription and the related Accepted Quote made under these Terms of Service constitutes a contract between you and Checkit LLC (referred to below as “**we**” or “**us**” and expressions such as “**our**” shall be defined accordingly).

Checkit LLC is a Florida limited liability company with an address of 485 Mariner Blvd., Spring Hill, FL 34609.

We are the operator of <https://www.checkit.net> and the provider of “**Checkit**”, described below.

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 2.2;

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 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;

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;

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 LLC, Checkit Europe Limited 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, Cloud Software services are provided by ISO27001-certified company, Checkit Europe Limited;

Commencement Date means the first day of the month following the month in which we accept your Offer in accordance with clause 2.2 – 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 16;

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

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.

DPA means the Checkit data processing agreement available at [Terms of Service | Checkit](#);

Due Date means a date on which payment is due, as set out in clause 13;

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;

Index means the Consumer Price Index as published by the Bureau of Labor Statistics;

Installation means installation of the Equipment at your premises either by us or by you as described in clause 5;

Installation Date means (if we are carrying out Installation) the date agreed by us following your first payment as described in clause 5.3;

Intellectual Property Rights means all patents, rights to inventions, copyright and related rights, trademarks, 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 or 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 19, 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;

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

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 in clause 5.4;

SLA means our service level agreement 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 2.3 and 2.4;

Support Hours means the hours of 08.30 to 17.00 (U.S. eastern 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 5.4;

Third Party EULAs means the end user licence agreements and other licence terms governing the Third Party Software and any open-source components used within Checkit, which you are required to read and accept;

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

User Account means Login Details 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 9.3;

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;

Writing or Written includes email; and

you means the organisation making an Offer and entering into a contract with us (and **your** shall be construed accordingly).

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 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 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.
- 2.3. Your Subscription will continue for the Minimum Term, unless either of us terminates it earlier in accordance with clause 19. On expiry of the Minimum Term, your Subscription shall continue until either of us gives notice to terminate in accordance with clause 19.
- 2.4. 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.
- 2.5. 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 that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

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 SLA or clause 4.1 (as applicable);
 - Telephone support during Support Hours and email support in accordance with our Data Sheets and SLA;
 - Template workflows, as applicable;
 - Where POM applies, continuous replacement parts/units as described in clause 8; and
 - Any other services listed in the Accepted Quote as included in your Subscription.

4. Support

- 4.1. During the Subscription Period, we shall meet the relevant service levels contained in the SLA.
- 4.2. Customer support services are provided to you by us and Checkit Europe Limited.
- 4.3. 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:
 - 4.3.1. any operation of Checkit which is not in accordance with our guidelines or instructions;
 - 4.3.2. any improper use, operation or neglect of the Software, the Equipment or any other element of Checkit;
 - 4.3.3. your failure to implement recommendations or solutions to faults;
 - 4.3.4. 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;
 - 4.3.5. 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;
 - 4.3.6. failure of any hardware, any network, cabling, peripheral or telecommunications equipment, or failure of the configuration of these components; or

4.3.7. the effect of natural disaster or any electrical fault.

5. Delivery and Installation; supply of certain Additional Services

- 5.1. Delivery of the Equipment shall be deemed to have taken place on the next Business Day after dispatch.
- 5.2. If you fail to accept or take delivery of the Equipment when we or our contractor attempt to deliver it:
 - 5.2.1. delivery of the Equipment shall be deemed to have been completed at 9.00 am (New York time) on the Business Day following the day of attempted delivery; and
 - 5.2.2. 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.
- 5.3. Where we install the Equipment, we shall agree with you when Installation shall take place. In order to agree an Installation date / schedule of dates, we require a completed Checkit Requirements Document.
- 5.4. Once the Equipment has been installed at a particular site, we 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, we will confirm in Writing that the Installation is complete across all sites ("System Sign Off").
- 5.5. If installation is delayed, prolonged, or postponed by you, we will be entitled to 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. Software

- 6.1. 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.
- 6.2. 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.
- 6.3. You undertake not to, and agree to ensure that your Authorised Users do not:
 - 6.3.1. use the Software for any illegal purpose or any purpose other than that for which it is intended;
 - 6.3.2. 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;
 - 6.3.3. 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;
 - 6.3.4. 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;
 - 6.3.5. 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;
 - 6.3.6. 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);

- 6.3.7. probe, scan or test the vulnerability of Checkit or attempt to circumvent or hack any user authentication or security controls in respect of Checkit.
- 6.4. From time to time as part of your Subscription we may make available Maintenance Releases and new versions of the Software. We will roll out any Maintenance Release automatically as part of your Subscription, provided you continue to pay the Subscription Fees. Where any Maintenance Release, new version of the Software 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.
- 6.5. 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.
- 6.6. 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.
- 6.7. You undertake to notify us without undue delay if you discover any security defects/issues with any aspect of Checkit and to keep any such concerns confidential.

Cloud Software

- 6.8. 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.

Third Party Software

- 6.9. The Software contains Third Party Software and open-source components which are used under licence. A list of those components and the associated Third Party EULAs is available on the Website here:
<https://www.checkit.net/terms-of-service/third-party-software/>

7. Equipment

- 7.1. 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 the Subscription Fees or delivery of the Equipment, whichever happens later.
- 7.2. 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.
- 7.3. During your Subscription, you agree:
- 7.3.1. 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;
- 7.3.2. to keep the Equipment in a safe and secure environment and to insure it against loss or damage;
- 7.3.3. 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;
- 7.3.4. 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;

- 7.3.5. 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;
- 7.3.6. 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;
- 7.3.7. 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;
- 7.3.8. 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;
- 7.3.9. not to use any Equipment for any unlawful purpose;
- 7.3.10. 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;
- 7.3.11. to retain at all times our proprietary markings on the Equipment; and
- 7.3.12. 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.

8. POM: warranty

- 8.1. This clause 8 applies only to POM and only to Equipment purchased under the POM subscription.
- 8.2. The Equipment is described in the Quote. We warrant that the Equipment will conform in all material respects with the description in the Quote.
- 8.3. We will use reasonable endeavours to remedy any fault in the Equipment. Any fault identified will need to be confirmed by us either on site or on return to base. If no fault is identified or if clause 8.7 applies, One-off Charges at List Price will be payable.
- 8.4. 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 8.7 and 8.11).
- 8.5. 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).
- 8.6. 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.
- 8.7. The warranty set out in clauses 8.1 to 8.4 shall not apply:
 - 8.7.1. 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;
 - 8.7.2. 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;
 - 8.7.3. where the fault arises from the use of the Equipment in conjunction with equipment not provided by us (or on our behalf);
 - 8.7.4. to any cosmetic damage which does not affect the functionality of the Equipment; and
 - 8.7.5. to any damage caused by events outside our reasonable control.

- 8.8. In the case of Checkit Sensors/Equipment replaced under clause 8.4 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 8.10. 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.
- 8.9. 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.
- 8.10. 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.
- 8.11. If you continue to use or fail to return the relevant Equipment in accordance with clause 8.10:
- 8.11.1. 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
- 8.11.2. if we have sent any replacement Equipment to you we will be entitled to charge you the List Price of the unreturned Equipment.

9. One-off Charges Equipment: warranty

- 9.1. This clause 9 applies to all purchases of Equipment via One-off Charges.
- 9.2. 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 free of charge any fault in the following Equipment arising during the applicable warranty period (calculated from the date of delivery) set out below:

Equipment	Warranty Period
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

- 9.4. 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.
- 9.5. 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).
- 9.6. Where an item of Equipment is repaired or replaced under clauses 9.3 or 9.4, 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.
- 9.7. The warranty set out in clauses 9.2 to 9.4 shall not apply:
- 9.7.1. 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;
- 9.7.2. 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;
- 9.7.3. where the fault arises from the use of the Equipment in conjunction with equipment not provided by us (or on our behalf);
- 9.7.4. to any cosmetic damage which does not affect the functionality of the Equipment;

- 9.7.5. to any damage caused by events outside our reasonable control (for example, any of the events referred to in clause 22);

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.

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

10. Calibration

- 10.1. Checkit is able to provide calibration services either directly or indirectly 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.

- 10.2. Annual recalibration is available for an additional fee.

11. The App

- 11.1. If your Subscription includes the App this clause applies.

- 11.2. The ways in which you can use the App may also be controlled by the Google Play rules and policies https://play.google.com/intl/en-us_us/about/play-terms/index.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/>.

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

- 11.4. 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.

- 11.5. 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.

- 11.6. 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.

12. Charges

- 12.1. Subscription Fees and One-off Charges are set out in the Accepted Quote or otherwise in Writing.

- 12.2. For Multi-Site Subscriptions we shall issue one invoice to cover all relevant sites. We shall not invoice on a per-site basis.

- 12.3. 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.

- 12.4. You acknowledge that all Subscriptions are calculated on the basis that they are payable in advance.

- 12.5. 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.

- 12.6. We reserve the right to increase:

- 12.6.1. Our List Prices for One-off Charges at any time;
- 12.6.2. the Subscription Fees on an annual basis with effect from each anniversary of the Commencement 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 Commencement Date and shall be based on the latest available figure for the percentage increase in the Index; and
- 12.6.3. 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) variations or extensions to the Additional Services or the time when they are to be provided;
 - (v) work to be carried out other than during Support Hours;
- 12.7. Where clause 12.6.3 applies, we shall give 30 days' notice in Writing in advance. We 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.
- 12.8. 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.
- 12.9. 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 if specified in your Accepted Quote.

13. Payment

- 13.1. You must pay all sums due to us within 30 days of the Commencement Date and each subsequent anniversary of the Commencement Date. Payment is due whether or not a purchase order has been issued.

One-off Charges

- 13.2. Unless otherwise stated in the Accepted Quote the Due Date for all One-off Charges (e.g. Installation, training, etc.) is 30 days' after the Commencement Date.

Periodical Payments

- 13.3. Unless otherwise stated in the Accepted Quote the Due Date for your first Periodical Payment (e.g. Subscription Fee) is the Commencement Date.
- 13.4. For subsequent payments the Due Date is the anniversary of the Commencement Date.
- 13.5. When you make an Offer, you must provide us with a signed Quote and if required by you, approved purchase order information and any other relevant valid, up-to-date and complete contact and billing details.
- 13.6. Without limiting any other right or remedy of ours, if you fail to make any payment due to us by the Due Date:
- 13.6.1. we may suspend your access to the Cloud Software and if your failure to make payment continues for more than two (2) months beyond the Due Date we may destroy your Data held on the Cloud Software;
 - 13.6.2. 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
- 13.7. 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.

14. Your obligations

- 14.1. You will:
- 14.1.1. co-operate with us in all matters relating to Checkit including in relation to the replacement of Equipment to ensure optimal performance;
 - 14.1.2. 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;
 - 14.1.3. 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 Checkit;
 - 14.1.4. 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);
 - 14.1.5. prepare your premises and systems for the delivery of the Equipment and supply of any Additional Services in accordance with our Checkit Requirements Document;
 - 14.1.6. set up on your IT system appropriate permissions reports and other required configurations of the Checkit system;
 - 14.1.7. provide details of all relevant Alert Managers, where applicable, in the format specified in our Checkit Requirements Document prior to the Installation Date. If you do not, we shall 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.
 - 14.1.8. 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;

- 14.1.9. monitor and manage the Authorised Users' use of Checkit and ensure your and the Authorised Users' compliance with these Terms of Service;
 - 14.1.10. ensure that no more than the Permitted Number use Checkit;
 - 14.1.11. 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;
 - 14.1.12. 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;
 - 14.1.13. 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;
 - 14.1.14. 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;
 - 14.1.15. remove the App from any device prior to its sale or disposal by you; and
 - 14.1.16. pay all monies due on their Due Date.
- 14.2. You shall not, and shall procure that your Authorised Users do not:
- 14.2.1. load any applications on to the Equipment other than the Software;
 - 14.2.2. breach or fail to comply with these Terms of Service or any Third Party EULA;
 - 14.2.3. 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;
 - 14.2.4. provide access to Checkit to any individual or legal entity other than the Permitted Number;
 - 14.2.5. use Checkit in contravention of any applicable law; or
 - 14.2.6. use Checkit outside the scope of the basis on which the Accepted Quote was prepared.
- 14.3. 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"):
- 14.3.1. we may suspend provision of Checkit and/or Additional Services until you remedy the Customer Default;
 - 14.3.2. 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
 - 14.3.3. you will indemnify us against any costs or losses we sustain or incur arising directly or indirectly from the Customer Default.
- 14.4. 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.

15. Intellectual property rights.

- 15.1. 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.

- 15.2. 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.
- 15.3. 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.
- 15.4. Unless otherwise agreed in Writing you will not acquire any Intellectual Property Rights in any Material.
- 15.5. You grant Checkit a sole, irrevocable, worldwide, royalty free licence to create or use Derived Data for any legal business purpose including product development and analytical purposes.

16. Data and Data Processing

Checkit's DPA applies to your use of Checkit and forms part of your Subscription.

17. Confidentiality

- 17.1. 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 17.2 and 17.3, 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 a Subscription, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 17.2. The restrictions in clause 17.1 shall not apply to information that:
 - 17.2.1. is or becomes publicly known other than through any act or omission of the Receiving Party;
 - 17.2.2. was in the Receiving Party's lawful possession before its disclosure by the Disclosing Party;
 - 17.2.3. is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or
 - 17.2.4. Is independently developed by the Receiving Party, which independent development can be shown by Written evidence.
- 17.3. Nothing in these Terms of Service shall restrict any disclosure of confidential information required by law or a court order.
- 17.4. This clause 17 shall survive the termination of the Subscription or any contract to provide Additional Services.
- 17.5. 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.

18. Making changes to your Subscription

- 18.1. 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.
- 18.2. 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 may incur a premium on hardware and/or may result in the Minimum Term restarting on the date of the new Accepted Quote.
- 18.3. 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.

18.4. If your Equipment needs to be moved we must be informed in advance and you must comply with our instructions. You will be subject to a One-off Charge for the reinstallation of the Equipment.

19. Ending the Subscription

19.1. You or we may end your Subscription or terminate any contract to provide Additional Services immediately by giving Written notice if:

19.1.1. 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

19.1.2. 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.

19.2. 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.

19.3. 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 19, 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).

19.4. 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.

19.5. On termination of your Subscription:

19.5.1. your right to use the Software, other than Embedded Software in Equipment you have purchased, will automatically end;

19.5.2. 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.

19.5.3. we will on request download or provide for download in a suitable file format one copy of, or where applicable provide temporary access to, all Data held in the Cloud Software, provided all payments referred to in clause 19.5.2 have been received by us. After you have obtained a copy of Data held in the Cloud Software or where no request has been made within two (2) months of your Subscription coming to an end we shall have no obligation to retain any of the Data or provide you with copies of any such Data.

19.6. 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.

20. Limitation of Liability

20.1. 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:

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

20.1.2. fraud or fraudulent misrepresentation.

20.2. Subject to clause 20.1:

- 20.2.1. 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.
- 20.2.2. 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
- 20.2.3. subject to clause 20.2.24 our total aggregate 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 immediately preceding the date of the event giving rise to the claim under consideration less in all circumstances any amounts previously paid by Checkit to you in satisfaction of any liability to you; and
- 20.2.4. 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.
- 20.3. 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.

21. Your indemnity

- 21.1. Subject to clause 20, 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").
- 21.2. 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.
- 21.3. 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.

22. Force Majeure

- 22.1. Neither party shall be in breach of the Subscription nor liable for delay in performing or failure to perform, any of its obligations under a Subscription 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.
- 22.2. The performing party shall use all reasonable efforts to mitigate the effect of the Force Majeure Event on the performance of its obligations.

23. Changes to these Terms of Service

23.1. We may update these Terms of Service from time to time. The updated version of these Terms of Service shall be available on our Website. We will give you at least 30 days' notice in Writing of any material change and the change will become effective after the expiry of the 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.

24. General clauses

24.1. 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.

24.2. You may not assign, transfer, charge or subcontract your Subscription or your rights or obligations under it without our prior Written consent (not to be unreasonably withheld).

24.3. You must obtain our prior Written consent to any change in ownership or control of you, such consent not to be unreasonably withheld.

24.4. Any notices must be in writing and sent by:

24.4.1. prepaid first-class post or commercial courier to the registered office or principal place of business; or

24.4.2. sent by email to the other party's main email address as set out in the Accepted Quote.

24.5. A notice will be deemed to have been received, if sent by prepaid first-class post, at 9.00 am New York 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.

24.6. If you wish to end your Subscription by giving Notice it must be given in Writing in accordance with clause 24.4.

24.7. Clauses 24.4 and 24.5 shall not apply to the service of any proceedings or other documents in any legal action.

24.8. 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.

24.9. 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.

24.10. A person who is not a party to these Terms of Service shall not have any rights under or in connection with them.

24.11. 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.

24.12. The headings in these Terms of Service are included for ease of reference only and shall not affect their construction.

24.13. 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 Delaware law and the parties submit to the exclusive jurisdiction of the courts of Delaware. Before either party initiates any legal action, other than injunctive relief, the parties will first hold an executive conference. The conference will be attended by at least one executive from each party. At the conference, each party will present its view of the Dispute and the executives will enter into good faith negotiations in an attempt to resolve the Dispute. If the Dispute is not resolved, then either party may pursue resolution of the Dispute consistent with the other terms of this Agreement.

- 24.14. With respect to your access and use of Checkit made available hereunder, you will comply with all applicable import and export control laws, orders and regulations of the United States and other applicable jurisdictions. You confirm that you are not named on any U.S. government denied-party list and covenants that you shall not permit access to Checkit to any individual or entity on such list. In addition, you shall not permit any users to access or use Checkit in a U.S. embargoed country.
- 24.15. The parties hereby agree that their respective rights and obligations will be solely and exclusively as set forth in these Terms of Service and the Accepted Quote and that the International Sale of Goods and UCITA, whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, will not apply and are hereby disclaimed.
- 24.16. All provisions of these Terms of Service which by their nature should apply beyond its Minimum Term will remain in force after any termination or expiration of the Minimum Term including, but not limited to, sections 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 20, 21, 23 & 24. Limitation of Liability, Confidential Information; Insurance; Severability; Notices; Advertising; Survival; Dispute Resolution - Executive Escalation; Governing Law and Forum; and Interpretation.
- 24.17. Each party shall at all times comply, and shall ensure that its personnel comply, with respect to the performance of these Terms of Service, with the relevant law concerning bribery and corruption.
- 24.18. Each party shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force.