

## CHECKIT TERMS OF SERVICE

### IMPORTANT NOTICE:

Please take a few minutes to carefully read the Key Information and Terms of Service set out below.

BY SIGNING OUR QUOTE OR SUBMITTING A PURCHASE ORDER OR CLICKING ON THE "ACCEPT" BUTTON OR ARRANGING FOR THE INSTALLATION OF CHECKIT OR BY USING CHECKIT OR ARRANGING FOR ADDITIONAL SERVICES TO BE SUPPLIED BY PURCHASE ORDER OR OTHERWISE OR BY 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 (WHENEVER ISSUED). BY CONTINUING TO USE CHECKIT YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE IN PLACE OF ALL PREVIOUS TERMS AND CONDITIONS, TERMS OF ENGAGEMENT OR PRIOR VERSIONS OF ANY CHECKIT TERMS OF SERVICE.

### Key information

#### Legal Nature of Subscription

Your Subscription and any agreement made under these Terms of Service constitutes a contract between you and Checkit Europe Limited or Checkit UK Limited as the case may be (referred to below as "**we**" or "**us**" and expressions such as "**our**" shall be defined accordingly). The name of the Company with which you are contracting will be specified in your Quote.

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

Checkit UK Limited is a company registered in England and Wales (company number 2540171) and our registered office is at Broers Building, 21 J J Thomson Avenue, Cambridge, England, CB3 0FA, England.

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

Your attention is drawn to condition 24 (Limitation of Liability).

#### Types of subscription

Checkit provides a number of subscription options and these will change from time to time. Please see our website.

Amounts payable under Checkit contracts fall under two categories:

1. One-off charges for goods and services.
2. Periodical payments for goods and services – payable on a regular basis (normally annually) throughout the contract.

One-off charges and periodical payments will be shown separately on the Quote.

Additional terms (including the subscription payable) will be set out in your individual Quote which forms part of your contract with us. If there is any conflict between these Terms of Service and the Quote, the Quote terms will take precedence.

Not all elements of Checkit will necessarily be available under all types of subscription – see your Accepted Quote for details of your subscription.

All contracts will be subject to a credit reference check and we reserve the right to pass credit information to credit reference agencies.

#### How are subscriptions calculated?

Checkit uses a number of bases to calculate subscriptions including:

- Per device

- Per user
- Per team
- Per site

The method used will be specified on your Quote.

### **Frequency of payment**

Usually payment is annually in advance. Monthly and quarterly options are available at extra cost.

### **Minimum Term**

The standard Minimum Term is 36 months. Shorter periods are available at extra cost.

### **Changes to the Subscription**

You may request changes to your Subscription at any time. Please see condition 22 for more information about how to do this. Making a change to your Subscription will generally result in an extension of the Minimum Term.

### **What happens at the end of the Minimum Term?**

Your Subscription will continue until you or we give notice and the Notice Period has expired after the end of the Minimum Term.

### **How can I cancel my Subscription?**

You may cancel your Subscription at the end of or after the end of the Minimum Term by giving us the required Notice. You are also allowed to end your Subscription earlier in certain other circumstances. For details of when your Subscription can be ended earlier please see condition 23.

### **Who owns the Checkit equipment?**

The equipment will belong to you once we have received payment. You will be responsible for any loss or damage to the equipment once it is in your possession. For details about replacing any of the equipment please see conditions 8, 9 and 10.

### **Who owns the Checkit software?**

We do – see condition 7.

### **Who owns data held on the Checkit system?**

You do - see condition 20.

### **Do I have to use Checkit Equipment to access Connected Workflow Management?**

No, if the Quote includes the Checkit App for Android. See condition 12.

### **Can I use one login for multiple users?**

No. This practice violates good management practice which is that operational transactions should be traceable and staff should be accountable for their actions. Compliance practitioners and auditors are unlikely to find the practice acceptable.

### **Support**

If you are having problems with the Equipment or accessing the Checkit cloud software, please contact us. For more details about our support service (including repair/replacement of equipment) please see conditions 4, 8, 9 and 10.

### **Contacting Us**

If you'd like to speak to us about your Subscription or any aspect of Checkit, please email [help@checkit.net](mailto:help@checkit.net) or refer to the Checkit website.

## **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 condition 2.5;

**"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 condition 5.3) and Excluded Services;

**"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 text and/or email and/or telephone notifications related to Checkit Sensors and/or the App

**"App"** means the Checkit App for Android 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 (where your subscription is calculated by reference to a number of named users) whose name has been recorded by us;

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

**"Bespoke Checklist"** means any bespoke Checklist supplied to you as part of Additional Services;

**"Beta Product"** means any equipment, services, software, features or other digital content being developed or made available by us as part of Checkit but which are not yet fully developed and tested for commercial use;

**"Beta Trial"** has the meaning set out in condition 18.1;

**"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 checklists and other content as offered by Checkit Europe Limited or Checkit UK Limited and its products Connected Automated Monitoring ("CAM" and "CAM+") Connected Workflow Management ("CWM") and Connected Building Management ("CBM" and "Checkit BEMS") and its former trading brands "Next Control Systems ("Next"), Tutela Monitoring Systems ("Tutela") and Axon Building Performance Solutions ("Axon"), as described in more detail in the Quote and/or the Website;

**"Checkit Requirements Sheet"** means all of the information 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;

**"Checklist"** means any checklist created by us using the specification and content provided by you in accordance with condition 16;

**"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 those 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, where we are to install, the earlier of Installation and 3 months from the date of the Accepted Quote and where we are not to install, on the next Business Day after dispatch of the Equipment;

**"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 condition 20.2;

**"Data Protection Laws"** means the Data Protection Act 2018 and the EU General Data Protection Regulation 2016;

**"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 condition 14;

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

**"Equipment"** means the component parts of Checkit, including the Checkit Memo, 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 condition 9.8 or as a result of any breach by you or your obligations to us;

**"GDPR"** means the EU General Data Protection Regulation 2016

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

**"Installation Date"** means (if we are carrying out Installation) the date agreed by us following your first payment for Checkit described in condition 6.5

**"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 condition 23, unless otherwise specified in the Quote, a period of three years from Installation in the case of a single site Subscription and System Sign Off in the case of a Multi-Site Subscription;

**"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

**“Notice”** and **“Notice Period”** mean twelve (12) months unless otherwise specified in the Quote or otherwise agreed by us and you in Writing or via our online system;

**“Offer”** means your offer, in response to a Quote, to purchase a Subscription and/or Additional Services. It may be made by purchase order (**“PO”**), signature of these Terms of Service, Written or verbal request, acceptance of delivery or Installation or any other indication by you that wish to accept a Quote;

**“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 Authorised Users or teams or sites or devices specified in the Accepted Quote (if so specified);

**“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 conditions 6.8 and 6.10;

**“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 conditions 2.5 and 2.6;

**“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 condition 6.10;

**“Template Checklist”** means our template Checklists from time to time;

**“Third Party Software”** means any third party software programs including the Windows operating system, antivirus, and firewall programs;

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

**“Training Half Day”** means the provision of four hours 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 condition 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;

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

and **Writing** includes email.

## **2 Forming a contract**

- 2.1 We will issue you with a Quote, via the internet or otherwise 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 statement of your requirements which are reflected in the Quote is 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 invitation to you to make us an Offer on the terms of the Quote and these Terms of Service. Accordingly, if you accept the Quote, you are making an Offer.
- 2.4 If you make us an Offer, we may accept it after having carried out a credit reference check on you. We may request a deposit or an advance payment of amounts which would become due under the Subscription as a result of the credit reference check and may amend the Quote in any other way. In such cases, we will provide an updated Quote which, by accepting, you make us an offer to purchase a Subscription to Checkit on the terms of the updated Quote and these Terms of Service.
- 2.5 If we accept your Offer, as provided above, we will issue you with a separate confirmation (by email or other means) on which date the contract between us will come into existence and the Quote becomes an Accepted Quote. Your Subscription Period will begin on the Commencement Date, where installation is not required, and upon Installation in all instances where installation by us is required, except that in the case of a Multi-Site Subscription your Subscription is payable on a pro rata basis from each Site Sign Off.
- 2.6 Your Subscription will continue for the Minimum Term, unless either of us terminates it earlier in accordance with condition 23. On expiry of the Minimum Term, your Subscription shall continue until either of us gives notice to terminate in accordance with condition 23. We do not offer a cooling off period for your Subscription or for Additional Services because you warrant and represent that you are contracting in the course of a business, trade or profession and not as a consumer.
- 2.7 Any changes to your Subscription must be confirmed by Checkit in accordance with condition 22.
- 2.8 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.
- 2.9 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. You acknowledge that you have not relied on any statement, promise or representation whether verbal or Written 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 condition 4.1 (as applicable)

- Telephone support during Support Hours and email support in accordance with our Data Sheets and SLS
- Template Checklists, as applicable
- For POM continuous replacement parts/units as described in condition 9
- 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 of Authorised Users or teams or addresses or devices (if it is priced on that basis). 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.

#### **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

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;

4.2.6 failure of any hardware, any network, cabling, peripheral or telecommunications equipment, or failure of the configuration of these components;

4.2.7 or the effect of lightning 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
- Checklist 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
- 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 the Wi-Fi at a sufficiently functional level, and you do not provide Ethernet ports, we can, on request, and at your risk, facilitate the connection of the Checkit Equipment to a device that uses the cellular network. The cost of the device, initial and ongoing, will be borne by you and One-off Charges will be payable.

5.5 In the case of consultancy or training:-

- We have no obligation to supply a specific consultant or trainer; we may use any of our employees or contractors to provide the Services
- Unless otherwise agreed in Writing the services shall be performed at the Address or, if specified in the Accepted Quote, remotely

## **6 Delivery and Installation: supply of certain Additional Services**

6.1 We will 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.

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

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

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

6.4.1 delivery of the Equipment shall be deemed to have been completed at 9.00 am (UK time) on the Business Day following the day of attempted delivery; and

6.4.2 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).

6.5 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 14.1), unless otherwise stated on the Accepted Quote.

6.6 You must provide us with a completed and signed Checkit Requirements Sheet 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 Wi-Fi and Ethernet signal) and the designation of Alert Managers, where applicable, and a single point of contact to be onsite on the Installation Date.

6.7 If you fail to provide us with a completed and signed Checkit Requirements Sheet 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 our standard day rate for Installation or our cancellation fee. 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.

6.8 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 condition 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.

- 6.9 For Multi-Site Subscriptions you must provide a completed and signed Checkit Requirements Sheet for each site.
- 6.10 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.
- 6.11 If you do not to provide details of all relevant Alert Managers, where applicable, in the format specified in our Checkit Requirements Sheet 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 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.
- 6.12 Your Quote will detail whether Operational Qualification (OQ) is required and if so:-
- 6.12.1 we will inform you of any issue(s) with the Monitored Equipment upon completion of OQ at which stage you undertake to resolve the issue(s) and inform us upon completion of the same;
- 6.12.2 if OQ 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.
- 6.13 Any OQ actions arising for resolution by you will have no bearing upon either Cloud Sign Off or the payment by you of the One-Off and/or Subscription Fee charges listed in the Accepted Quote for which the Due Date(s) will remain the same.
- 6.14 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.
- 6.15 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 4 days of delivery or the Equipment is being used, whichever is the sooner.
- 6.16 Any dates quoted or agreed for delivery or Installation are approximate only, and the time for delivery or Installation is not of the essence.
- 6.17 Where we install the Equipment Basic Training is included. Condition 5 applies to any additional training required.
- 6.18 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.
- 6.19 In the case of Additional Services comprising training:-
- 6.19.1 They will be provided on the date and at the time indicated in the Accepted Quote or otherwise in Writing (“Supply Date”)
- 6.19.2 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 our standard day rate or our cancellation fee at List Price. 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.

- 6.19.3 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.
- 6.19.4 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.
- 6.19.5 We are not obliged to agree to any variation or extension to the services.

## **7 Software**

- 7.1 We hereby grant to you for the Subscription Period a non-exclusive, non-transferable, revocable, royalty-free licence to permit the Permitted Number of devices/users/teams/sites locations 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 of devices/users/teams/sites 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.
- 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 download or translate the Software;
  - 7.3.3 reverse engineer, disassemble, decompile, modify or adapt or otherwise attempt to derive source code for the Software or any Third Party 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, Trojans, spyware 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 we may make available Maintenance Releases and new versions of the Software or New Chargeable Features. We will roll out any Maintenance Release(s) 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. Where Maintenance Releases(s) new versions or New Chargeable Features require 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 future functionality.
- 7.5 Any Maintenance Release(s) new version(s) or New Chargeable Features provided to you shall form part of the Software and shall be subject to these Terms of Service.
- 7.6 We may withdraw support and stop providing services in respect of any Software and/or Maintenance Release or new version which for any reason is not fully implemented. In those circumstances we shall have no liability or

responsibility to you in respect of the proper operation of Checkit and you will continue to be liable for payments under your Subscription whether or not the system is working.

- 7.7 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, provided we notify you of any such change prior to it coming into effect.

### **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 from the hardware, in particular, 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 from the hardware, in particular, Data, and to allow access to it across the internet. Such configuration will be based upon information provided by you in the Checkit Requirements Sheet.
- 7.9 In order to access and use the Cloud Software, you must be connected to the internet (using the supported web browser versions listed on our [Help Centre](#) where 7.8.1 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 and antivirus 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 or devices using Checkit.
- 7.11 Subject to conditions 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/tp\\_software/](https://www.checkit.net/tp_software/)

- 7.14 You agree to comply with the licence terms of the Third Party EULAs and any terms and conditions 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. The cost of the Equipment is a relatively low percentage of the total Subscription cost and its replacement value will be provided on request. If you are concerned, we recommend that you take out adequate insurance to cover any loss or damage to the Equipment, or any other element of Checkit, for the Subscription Period and will advise you of applicable values on request. 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.
- 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. You acknowledge that the security of the Equipment and the Software is essential to the functioning of Checkit;
  - 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 Equipment replacement ((POM) option only)**

- 9.1 This condition 9 applies only to POM and 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 condition 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 conditions 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 condition 23.1.
- 9.8 The warranty set out in conditions 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 where the fault arises from the use of the Equipment in conjunction with equipment not provided by us (or on our behalf);
  - 9.8.3 to any cosmetic damage which does not affect the functionality of the Equipment;
  - 9.8.4 to any damage caused by events outside our reasonable control (for example, any of the events referred to in condition 26);
  - 9.8.5 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 conditions 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 condition 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 Memo handheld devices) to you under condition 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 condition 9.11:-
  - 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 Equipment warranty**

- 10.1 This condition 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 condition 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 conditions 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 conditions 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 where the fault arises from the use of the Equipment in conjunction with equipment not provided by us (or on our behalf);

- 10.8.3 to any cosmetic damage which does not affect the functionality of the Equipment;
- 10.8.4 to any damage caused by events outside our reasonable control (for example, any of the events referred to in condition 26;

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.

10.11 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 UK Limited is a UKAS-accredited Calibration Laboratory able to provide calibration services either directly or indirectly via Checkit Europe Limited. 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, we will provide or procure digital certification of UKAS ISO17025 single 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 condition 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 App privacy policy is at [insert hyperlink].
- 12.3 The App can be used on most standard Android-based devices. Details of the memory and operating system requirements are on the Website.
- 12.4 You 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.
- 12.5 You must own (or have control over the content of) the device onto which the App is downloaded.
- 12.6 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.

## **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 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.
- 13.3 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 condition 13.7.3(iv).

- 13.4 Subject to 13.2 Subscription Fees payable by direct debit will be invoiced on or about the Due Date.
- 13.5 Subscription Fees do not include insurance of the Equipment, which is your responsibility.
- 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 from time to time provided that subject to condition 13.7.3 during the Minimum Term 30 days' notice of the increase must be given and the increase will be capped at 10% per annum; and
- 13.7.3 the Subscription Fees (or One-off Charges specified in the Accepted Quote), by giving you notice at any 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, and increases in labour, materials and other manufacturing costs); or
  - (ii) any request by you to change the delivery date(s), quantities or types of Equipment ordered; or
  - (iii) any delay or increase in costs caused by your failure to give us adequate or accurate information or instructions; or
  - (iv) your failure to pay the Subscription Fees on or in advance of the Due Date; or
  - (v) variations or extensions to the Additional Services or the time when they are to be provided; or
  - (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 number of Authorised Users 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) 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 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.
- 13.9 All amounts payable by you under these Terms of Service are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT") which is payable in addition.

## 14 **Payment**

- 14.1 You must pay all sums due to us on 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 date on which you make us an Offer as described in Condition 2.3. (If we do not accept the Offer we will refund the payment).

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

Periodical Payments: Annual and Quarterly payment frequency:

14.4 Unless otherwise stated in the Accepted Quote the Due Date for your first Periodical Payment (e.g. Subscription Fees) is the date on which you make us an Offer as described in Condition 2.3, except where Installation by us is required when the Due Date for your first Periodical Payment will be Site Sign Off or Cloud Sign Off, as applicable

14.5 For subsequent payments the Due Date is the anniversary or quarterversary of the Commencement Date or Site Sign Off or Cloud Sign Off, as applicable.

Periodical Payments: Monthly payment frequency:

14.6 Unless stated otherwise in the Accepted Quote Subscription Fees will be collected by direct debit on the following Due Dates:

14.6.1 where installation is not required by us, the date on which you make us an Offer by signing our Quote as described in condition 2.3, (if we do not accept that Offer, we will refund the payment).

14.6.2 where installation is required by us, Site Sign Off or Cloud Sign Off, as applicable

14.6.3 the Due Date for collection of the next payment, being the first monthly Subscription Fee payment (after that included in the First Payment where applicable) is:

(i) for Subscriptions entered into between the 1st and 15th of a month, the 28th of that month; and

(ii) for Subscriptions entered into after the 15th of a month, the 28th of the next month.

the Due Date for all further payments is the 28th of the applicable month where payment is by Direct Debit or in all other cases the monthiversary, quarterversary or the anniversary of the date of your Offer, or Site Sign Off or Cloud Sign Off, as applicable.

14.7 When you make an Offer, you must provide us with valid, up-to-date and complete credit card details or approved purchase order information acceptable to us and any other relevant valid, up-to-date and complete contact and billing details and if you provide direct debit, debit card or credit card details to us, you hereby authorise us to bill such debit card or credit card or take the direct debit payment on the Due Date in accordance with the payment profile set out in the Accepted Quote or these Terms of Service.

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

14.8.1 the total amount due under this agreement shall become payable in accordance with the provisions of condition 23.6;

14.8.2 we may suspend your access to the Cloud Software and if your failure to make payment continues for more than two months beyond the Due Date; we may destroy your Data held on the Cloud Software without further notice;

14.8.3 we may charge an administration fee (not exceeding 100% of the overdue amount);

14.8.4 we may charge interest on the overdue amount at the statutory rate or, if higher, the rate of 4 per cent 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;

14.8.5 we shall have the right to cancel any contract with you and/or suspend work in each case without prejudice to our right to recover damages for any loss sustained by us; and

14.8.6 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.

14.9 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 Sheet attached to your Quote, and these Terms of Service and/or the Website and that firewalls/antivirus 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 Sheet;

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 fire wall protections in place in respect of your IT network;

- 15.1.13 pay all monies due on their Due Date; and
- 15.1.14 form your own view and exercise your own judgement on recommendations made by us.

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 **Checklists**

16.1 Where we provide Checklist building or editing as Additional Services:-

- 16.1.1 Except where we provide consultancy as an Additional Service, you are responsible for providing the specification and all content to be included within your Checklist and you warrant, represent and undertake that such content does not infringe the Intellectual Property Rights or other rights of any third party.
- 16.1.2 We will use your content to create Checklists. It is your responsibility to arrange for a suitably qualified and experienced employee or third party contractor to review, approve and sign off Checklists.
- 16.1.3 You acknowledge that the content of a Checklist is your responsibility and we shall have no liability to you for the adequacy or otherwise of Checklists for your intended use thereof.

16.2 If you use Template Checklists you are responsible for deciding their suitability for your business/use.

16.3 In the case of the Bespoke Checklists you must give us accurate information and clear instructions and must carefully review, approve and sign them off.

## 17 **Try before you buy**

17.1 From time to time, we may at our sole discretion offer a time limited 'Try Before you Buy' scheme for Checkit on favourable terms ("**TBYB Scheme**"). If offered by us and accepted by you, and unless stated otherwise in the Accepted Quote, the TBYB Scheme shall continue for a maximum period of one month ("**Scheme End Date**").

- 17.2 If you take part in the TBYP Scheme, then Checkit will be provided to you on the terms set out in these Terms of Service, except that:
- 17.2.1 Checkit is provided without any term, condition or warranty (whether express or implied) of quality, functionality or performance during the TBYP Scheme;
  - 17.2.2 Conditions 9, 10 and 4 shall not apply during the TBYP Scheme; and
  - 17.2.3 special provisions relating to charges as set out in the Accepted Quote will apply during the TBYP Scheme, 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 condition 13.7 shall apply.
- 17.3 Unless you return the Equipment to us at your own expense by the Scheme End Date, your TBYP Scheme will automatically become a full annual payment frequency Subscription with the Minimum Term commencing and the Subscription Fees becoming payable on the Scheme End Date.
- 17.4 Unless specified otherwise in the Quote the Minimum Term will commence on the Scheme End Date and the Subscription Fees and One-off Charges payable will be at the rates specified in our List Price in force at the Scheme End Date.
- 17.5 Conditions 23.6 to 23.8 will apply where you return the Equipment to us by the Scheme End Date and the TBYP Scheme automatically expires.

## 18 **Beta Trials**

- 18.1 From time to time, we may invite you to test a Beta Product at no extra charge over and above the Subscription Fees (a "**Beta Trial**"). You may agree to accept or decline any such Beta Trial at your sole discretion. Unless otherwise stated by us, any Beta Trial will expire upon the earlier of (a) three months from the trial start date or (b) the date that a version of the relevant Beta Product is incorporated in a Maintenance Release or a new version.
- 18.2 Notwithstanding any other provision of these Terms of Service, if you agree to a Beta Trial, then:
- 18.2.1 the Beta Product is provided without any term, condition or warranty (whether express or implied) as to its quality, functionality, performance or any other matter during the Beta Trial;
  - 18.2.2 conditions 9, 10 and 4 shall not apply to the Beta Product during the Beta Trial; and
  - 18.2.3 no extra charges will be due in respect of your use of the relevant Beta Product during the Beta Trial, unless:
    - (i) any Beta Product or any other Equipment is damaged due to your misuse of the Beta Product or Equipment (as applicable) or lost (in which case condition 13.8 shall apply); or
    - (ii) you fail to return the Beta Product or any other Equipment (as applicable) to us at your own expense on expiry of the Beta Trial, in which case we shall be entitled to charge you for the full cost of the Beta Product or Equipment (as applicable).
- 18.3 On expiry of the Beta Trial conditions 23.6 to 23.8 will apply.

## 19 **Intellectual property rights.**

- 19.1 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. We confirm that we have the right to grant that licence.
- 19.2 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.

- 19.3 Any software or coding 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
- 19.4 Unless otherwise agreed in Writing you will not acquire any Intellectual Property Rights in any Material.

## **20 Data and Data Processing**

- 20.1 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.
- 20.2 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 condition 20.2, 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 condition 20.
- 20.3 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.
- 20.4 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 product development, benchmarking, research and marketing purposes.
- 20.5 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.
- 20.6 Without limiting any other provision of this condition 20, 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 but not limited to 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.
- 20.7 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 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
- 20.8 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.
- 20.9 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.
- 20.10 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 condition 20 and/or the Data Protection Laws.
- 20.11 The terms "Data Controller", "Data Processor" and "Data Subject" have the meanings given to them in the Data Protection Laws.

- 20.12 To the limited extent that we are your Data Processor we agree to :-
- 20.12.1 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;
- 20.12.2 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);
- 20.12.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 20.12.4 except by way of repatriation to the country in which you supplied it, not transfer any Personal Data outside of the European Economic Area. unless your written consent has been obtained and the following conditions are fulfilled:
- you or we have provided appropriate safeguards in relation to the transfer;
  - the data subject has enforceable rights and effective legal remedies;
  - 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.
- 20.12.5 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;
- 20.12.6 notify you without undue delay on becoming aware of a Personal Data breach;
- 20.12.7 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
- 20.12.8 maintain complete and accurate records and information to demonstrate our compliance with this agreement.

## 21 **Confidentiality**

- 21.1 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 conditions 21.2 and 21.3, 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.
- 21.2 The restrictions in condition 21.1 shall not apply to information that:
- 21.2.1 is or becomes publicly known other than through any act or omission of the Receiving Party;
- 21.2.2 was in the Receiving Party's lawful possession before its disclosure by the Disclosing Party;
- 21.2.3 is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or

21.2.4 is independently developed by the Receiving Party, which independent development can be shown by written evidence.

21.3 Nothing in these Terms of Service shall restrict any disclosure of Confidential Information required by law or a court order.

21.4 This condition 21 shall survive the termination of the Subscription or any contract to provide Additional Services.

21.5 Notwithstanding the provision of condition 20.1, 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.

21.6 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.

21.7 You acknowledge that we may undertake work for your competitors and consent to us doing so, relying upon the confidentiality obligations under this clause 21.

## **22 Making changes to your Subscription**

22.1 You may request an upgrade 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.

22.2 Upgrading your Subscription in the first 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 which increase(s) its value by more than 10%, immediately or cumulatively, will, unless specified in the new Accepted Quote, result in an automatic extension of the Minimum Term to 3 years from the date of the new Accepted Quote.

22.3 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.

22.4 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.

## **23 Ending your Subscription**

23.1 You or we may end your Subscription or terminate any contract to provide Additional Services immediately (but are not obliged to do so) by giving written notice if:

23.1.1 the other commits a material breach of its obligations and does not remedy that breach (if it is possible to do so) within 30 days after being given written notice of the breach; or

23.1.2 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.

23.2 We may end your Subscription at any time by giving you three months' notice, with such notice to expire no earlier than the end of the Minimum Term.

23.3 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 condition 23, 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).

- 23.4 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 condition 9 unless replacement is required during the Minimum Term.
- 23.5 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.
- 23.6 On termination of your Subscription:
- 23.6.1 your right to use the Software, other than Embedded Software in Equipment you have purchased, will automatically end;
- 23.6.2 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.
- 23.6.3 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 condition 23.6.2 have been received by us. After we have provided you with a copy of such download (or where any payment referred to in condition 23.6.2 has not been received within two months' of termination), we will have no obligation to retain any of the Data or provide you with copies of any such Data.
- 23.7 Any conditions that expressly state they will survive termination of your Subscription will do so as will any which by their nature are intended to survive.
- 23.8 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.

## **24 Limitation of Liability**

- 24.1 Checkit is not an insurance policy and does not obviate the need for you to have in force appropriate insurances for your business.
- 24.2 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. You agree that you may not rely on any advice given by us unless it is given in Writing.
- 24.3 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:
- 24.3.1 death or personal injury caused to you by our negligence;
- 24.3.2 fraud or fraudulent misrepresentation.
- 24.4 Subject to condition 24.3:
- 24.4.1 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 or contracts (including any claim for an account of profits or damages on a Wrotham Park basis);



- (ii) loss of use;
- (iii) loss of goodwill; or
- (iv) loss of or damage to, or unauthorised access to, the Data.

24.4.2 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

24.4.3 subject to condition 24.4.4 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;

24.4.4 this condition 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 or if your claim is covered by our professional indemnity insurance (and the insurer accepts liability in respect of your claim) £500,000.

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

## **25 Your indemnity**

25.1 Subject to condition 24, 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**").

25.2 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.

25.3 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.

## **26 Circumstances outside our control**

26.1 We will not be liable to you as a result of any delay or failure to perform our obligations due to an event outside our reasonable control, including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, epidemic or pandemic.

## **27 Changes to these Terms of Service**

27.1 We reserve the right to change these Terms of Service (but not so as to vary, within the Minimum Term, the financial terms contained in the Accepted Quote). We will give you at least 30 days' notice in Writing of any change and the change will become effective after the expiry of the 30 day period.

## **28 General conditions**

- 28.1 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.
- 28.2 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.
- 28.3 You must obtain our prior written consent to any change in ownership or control of you.
- 28.4 Any notices must be in writing and sent by:
- 28.4.1 prepaid first-class post or commercial courier to the registered office or principal place of business; or
  - 28.4.2 sent by email to the other party's main email address as set out in the Accepted Quote; or
  - 28.4.3 sent via the online contact form on the Website.
- 28.5 A notice will be deemed to have been received, if sent by prepaid first-class post, at 9.00 am 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.
- 28.6 Conditions 28.4 and 28.5 shall not apply to the service of any proceedings or other documents in any legal action.
- 28.7 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.
- 28.8 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.
- 28.9 A person who is not a party to these Terms of Service shall not have any rights under or in connection with them.
- 28.10 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.
- 28.11 The headings in these Terms of Service are included for ease of reference only and shall not affect their construction.
- 28.12 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.

TOS 7.0