

CHECKIT TERMS OF ENGAGEMENT – CONSULTANCY AND TRAINING SERVICE

IMPORTANT NOTICE:

Please take a few minutes to carefully read the key information and terms of service set out below.

BY SIGNING OR CLICKING ON THE “ACCEPT” BUTTON OR ARRANGING FOR THE SERVICES TO BE SUPPLIED BY PURCHASE ORDER OR OTHERWISE OR BY RECEIVING THE SERVICES YOU AGREE TO BE BOUND BY THESE TERMS OF SERVICE - CONSULTANCY AND TRAINING AND THOSE CONTAINED IN YOUR INDIVIDUAL QUOTE. THESE TERMS OF SERVICE – CONSULTANCY AND TRAINING ARE IN ADDITION TO OUR TERMS OF SERVICE FOR THE SUPPLY AND USE OF CHECKIT.

Key Information – we are Checkit Limited (referred to herein as “we” or “us” and expressions such as “our” shall be defined accordingly) a company registered in England and Wales (company number 9343487) and our registered office is at Broers Building, 21 JJ Thomson Avenue, Cambridge, CB3 0FA, England.

1. Definitions

We use the following definitions in these Terms of Engagement – Consultancy and Training Service (“TOE”):

“**Accepted Quote**” means our acceptance of your Offer based on our Quote as described in clause 2.5;

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

“**Charges**” means the charges payable for the Services or other items which are not covered by Subscription Fees, as set out in these TOE, the Accepted Quote or otherwise;

“**Checkit**” means the Checkit real-time operations management system and any applicable checklists and other content, as described in more detail in your Subscription and/or the Website;

“**Data**” means the data captured by the Checkit Sensors, including any Personal Data received and stored by Checkit in the limited circumstances described in condition 9.2;

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

“**Day**” means the provision of training during THE Normal Working Hours and includes up to one hour of travel to and from the Location;

“**Due Date**” means a date on which payment is due, as set out in condition 5;

“**Equipment**” means the component parts of Checkit, including the Checkit Memo, Checkit Sensors and any other Equipment provided to you as part of your Subscription (or as applicable) the Services;

“**Half Day**” means the provision of four hours of training during Normal Working Hours and includes travel of up to one hour in total to and from the Location;

“**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;

“**Location**” means the location specified in the Accepted Quote;

“**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 the Services or supplied to you;

“**Normal Working Hours**” means 9 am to 16.30 pm on a Working Day;

“**Offer**” means your offer, in response to a Quote, to purchase Services. It may be made by purchase order (“**PO**”), signature of these TOE, written or verbal request, acceptance of Services or any other indication by you that wish accept a Quote;

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

“**Quote**” means the quote for consultancy/training services which we generate and provide to you so that you can make an Offer, including any updated Quote;

“**Services**” means consultancy and/or training services as described in the Quote;

“**Subscription**” means your subscription (if any) for Checkit under our separate Terms of Service;

“**Support Hours**” means the hours of 09.00 to 17.00 (UK time) Monday to Friday or such other applicable support hours that are listed on the Website or in the Accepted Quote;

“**TOE**” means these Terms of Engagement – Consultancy and Training Service;

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

“**Website**” means our 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;

“**Working Day**” means a day other than Saturday or Sunday or a UK Public Holiday;

“**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. Provision of Consultancy and/or Training Services

- 2.1** We will issue you with a Quote, via the internet or otherwise in Writing, setting out the Charges (and any other terms not included in these TOE) for the supply to you of Services, based on your requirements 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 Business 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 TOE. 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 contract 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 Services on the terms of the updated Quote and these TOE.
- 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.
- 2.6** We do not offer a cooling off period because you warrant and represent that you are contracting in the course of a business, trade or profession and not as consumer.
- 2.7** These TOE apply unless and to the extent that the Accepted Quote states otherwise, in which case the terms of the Accepted Quote shall take precedence.
- 2.8** These TOE and the Accepted Quote constitute the entire agreement between you and us in relation to the Services. They 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 TOE. These TOE are in addition to the Checkit Terms of Service governing your subscription.
- 2.9** We have no obligation to supply a specific consultant or trainer; we may use any of our employees or contractors to provide the Services.

3. Place of Performance

- 3.1** Unless otherwise agreed in Writing the Services shall be performed at the Location or if specified in the Accepted Quote, remotely.

4. Time for Performance

- 4.1** The Services will be provided on the date and at the time indicated in the Accepted Quote (“Supply Date”)
- 4.2** 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.
- 4.3** 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.
- 4.4** In the case of an Accepted Quote which constitutes an order of a number of Days over a specified period any unused days may not be carried forward and must be paid for in full.

5. Charges

- 5.1** The Charges for the Services are set in the Accepted Quote or otherwise in Writing or if not otherwise specified are as per our List Price.
- 5.2** We reserve the right to increase the Charges to take account of:
- 5.2.1** any factor beyond our reasonable control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 5.2.2** delay or increase in costs caused by your failure to give us adequate or accurate information or instructions
- 5.2.3** variations or extensions to the Services or the time when they are to be provided
- 5.2.4** work to be carried out other than during Normal Working Hours
- 5.2.5** any change in the risk profile of the location or environment where the Services are to be provided
- 5.2.6** You will also pay our reasonable out of pocket expenses including but not limited to travel and accommodation.
- 5.3** For the avoidance of doubt we are not obliged to agree to any variation or extension to the Services.
- 5.4** All amounts payable by you under these TOE are exclusive of amounts in respect of value added tax chargeable from time to time (“VAT”) which is payable in addition.

6. Payment

- 6.1** 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.
- 6.2** The Due Date is the date specified in the Accepted Quote or other quote or if none within 28 days of delivery of invoice.
- 6.3** Without limiting any other right or remedy of ours, if you fail to make any payment due to us by the Due Date:
- 6.3.1** 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 it;
 - 6.3.2** the total amount due under this agreement shall become payable in accordance with the provisions of condition 11.3;
 - 6.3.3** we may charge an administration fee (not exceeding 100% of the overdue amount); and
 - 6.3.4** 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.
- 6.4** You shall pay all amounts due under these TOE 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.
- 6.5** If you fail to pay us any amount on its Due Date:-
- (a)** 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 it.
 - (b)** 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.

7. Your Obligations

7.1 You will at all times:

- 7.1.1** ensure that your IT network and services and plug points are available fully functioning and comply with the relevant specifications required for Checkit to operate to enable us to provide the Services;

- 7.1.2 co-operate with us in all matters relating to the Services;
- 7.1.3 ensure that all relevant members of your staff are available and on time.
- 7.1.4 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 the Services;
- 7.1.5 pay all monies due hereunder on their Due Date.
- 7.1.6 form your own view and exercise your own judgement on recommendations made by us.
- 7.2 If our performance of any of our obligations in respect of the Services is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation (“**Customer Default**”):
 - 7.2.1 we may suspend provision of the Services until you remedy the Customer Default;
 - 7.2.2 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 the Services; and
 - 7.2.3 you will indemnify us against any costs or losses we sustain or incur arising directly or indirectly from the Customer Default.
- 7.3 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.

8. Intellectual property

- 8.1 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 TOE/your Subscription as applicable. We confirm that we have the right to grant that licence.
- 8.2 Any Intellectual Property Rights owned by you prior to entering this contract which may be used as part of the Services in order to fulfil your specific requirements will remain solely your property.
- 8.3 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.
- 8.4 Unless otherwise agreed in Writing you will not acquire any Intellectual Property Rights in any Material.

9. Data

- 9.1** You own all right, title and interest in and to all of the Data and 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.
- 9.2** We may require Personal Data about your Authorised Users (comprising identifiers such as names, email addresses and mobile telephone numbers) to be stored on our systems in order to provide the Services. To that limited extent only we process Personal Data in connection with your Subscription as your Data Processor. Except as expressly set out in this condition 9.2, 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.
- 9.3** You agree to us accepting and using the Data in order to provide the Services.
- 9.4** You further agree and acknowledge that we may, for our own purposes, anonymise any of the Data which is Personal Data so that it is no longer capable of identifying individuals, and further process it for product development, benchmarking, research and marketing purposes. Except to that extent, we are not the Data Controller of any Data.
- 9.5** Without limiting any other provision of this condition 9, you undertake to obtain any necessary consents from all Data Subjects with respect to the processing of Data by you or by us.
- 9.6** 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 [9] and/or the Data Protection Laws.
- 9.7** The terms “Data Controller”, “Data Processor” and “Data Subject” have the meanings given to them in the Data Protection Laws.

10. Confidentiality

- 10.1** 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 10.2 and 10.3, 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.

- 10.2** The restrictions in condition 10.1 shall not apply to information that:
- 10.2.1** is or becomes publicly known other than through any act or omission of the Receiving Party;
 - 10.2.2** was in the Receiving Party's lawful possession before its disclosure by the Disclosing Party;
 - 10.2.3** is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or
 - 10.2.4** is independently developed by the Receiving Party, which independent development can be shown by written evidence.
- 10.3** Nothing in these TOE shall restrict any disclosure of Confidential Information required by law or a court order.
- 10.4** This condition 10 shall survive the termination of the contract.
- 10.5** Notwithstanding the provision of condition 10.1, 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.
- 10.6** 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 trade marks this constitutes your consent under section 9 of the Trade Marks Act 1994.
- 10.7** You acknowledges that we may undertake work for your competitors and consent to us doing so, relying upon our confidentiality obligations under this clause 10.

11. Termination

- 11.1** You or we may end this contract immediately (but are not obliged to do so) by giving written notice if:
- 11.1.1** 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
 - 11.1.2** 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.
- 11.2** Where we have the right to terminate this contract under any of the circumstances set out in this condition 11, we may instead suspend our provision of Services to you.

- 11.3** On termination of this contract you shall immediately pay to us 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.
- 11.4** Any conditions that expressly state they will survive termination of this contract will do so as will any which by their nature are intended to survive.
- 11.5** Any rights and remedies accrued at termination (including the right to claim damages for any breach of the TOE at or before termination) will not be affected.

12. Liability

12.1 Nothing in these TOE shall limit or exclude our liability to the extent that such liability cannot be limited or excluded by law, including liability for:

12.1.1 death or personal injury caused to you by our negligence;

12.1.2 fraud or fraudulent misrepresentation.

12.2 Subject to condition 12.1:

12.2.1 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 TOE or otherwise:

12.2.1.1 any loss of profit, revenue, business or contracts (including any claim for an account of profits or damages on a Wrotham Park basis);

12.2.1.2 loss of use;

12.2.1.3 loss of goodwill; or

12.2.1.4 loss of or damage to, or unauthorised access to, the Data.

12.2.2 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 TOE or otherwise; and

12.2.3 our total liability to you in respect of all other losses arising under or in connection with your Subscription or these TOE or otherwise, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges paid for the Services or if your claim is covered by our professional indemnity insurance (and the insurer accepts liability in respect of your claim) £500,000.

12.3 Except as expressly and specifically provided in these TOE, 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.

12.4 You may not rely upon any advice given by us unless it is in Writing.

13. Your indemnity

13.1 Subject to condition 12, 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 the Services, where such use is not in accordance with the terms of this contract ("**Claim**").

13.2 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.

13.3 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.

14. Circumstances outside our control

14.1 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 or storm.

15. Changes to these TOE

15.1 We reserve the right to change these TOE (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.

16. General conditions

16.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under these TOE and may transfer, subcontract or delegate in any manner any or all of our obligations under the Subscription/the Accepted Quote and/or these TOE to any third party.

16.2 You may not, assign, transfer, charge or subcontract this contract or your rights or obligations under it without our prior written consent.

- 16.3** You must obtain our prior written consent to any change in ownership or control of you.
- 16.4** Any notices must be in writing and sent by:
- 16.4.1** prepaid first-class post or commercial courier to the registered office or principal place of business; or
- 16.4.2** sent by email to the other party's main email address as set out in the Accepted Quote; or
- 16.4.3** sent via the online contact form on the Checkit.net website.
- 16.5** 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.
- 16.6** Conditions 16.4 and 16.5 shall not apply to the service of any proceedings or other documents in any legal action.
- 16.7** A waiver of any right under these TOE 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 TOE 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.
- 16.8** 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 TOE shall not be affected.
- 16.9** A person who is not a party to this contract shall not have any rights under or in connection with it.
- 16.10** In these TOE 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.
- 16.11** In the event of any conflict between the TOE and our Terms of Service the provision of the latter shall prevail.
- 16.12** The headings in these TOE are included for ease of reference only and shall not affect its construction.
- 16.13** Any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) or these TOE ("**Disputes**") will be

governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.