

Checksafe Terms and Conditions

(Version 9)

Except to the extent agreed otherwise in writing by Checksafe, these Terms and Conditions apply to the provision of the Product and the Services by Checksafe Limited (**Checksafe**) to the entity identified in the Order Form (**Customer**) and to any use of the Product and the Services. Checksafe and Customer are referred to in these Terms and Conditions each as a **Party** and together as the **Parties**. By using the Product, you agree to be bound by these Terms and Conditions. If you do not agree, you should cease using the Product and the Services. Capitalised terms are defined in clause 20 below.

1. Term

- 1.1 The subscription to the Product, and any Standard Support, starts on the Commencement Date.
- 1.2 Unless terminated in accordance with the Agreement:
- (a) the subscription to the Product, and any Standard Support, continues for the Initial Term; and
 - (b) at the end of the Initial Term, the subscription to the Product, and any Standard Support, shall automatically renew for further periods of 12 months at a time (each a **Renewal Term**),
- unless either Party gives the other written notice of termination at least 90 days prior to the expiration of the Initial Term or the then-current Renewal Term, as the case may be.
- 1.3 Onboarding Services start on the Commencement Date.
- 1.4 Any other Services start on the date agreed between the Parties.
- 1.5 Checksafe shall use reasonable efforts to perform the Services within any timeframe agreed in writing between the parties or, if no such timeframe is agreed, within a reasonable time.

2. The Product and Services and Checksafe Obligations

- 2.1 Subject to the payment of the Fees and Customer's compliance with this Agreement, Checksafe will, during the Term and on a non-exclusive basis:
- (a) provide the Product identified in the Order Form for access by End Users;
 - (b) make available the Documentation to the Customer solely for use in connection with the Product; and
 - (c) provide the Services, as provided for in the Order Form.
- 2.2 Customer is permitted to use the Product in relation to its business located in the Territory.
- 2.3 All rights in and to the Product and Services not expressly granted to Customer in this Agreement are reserved by Checksafe.
- 2.4 Checksafe will use reasonable efforts to ensure that:
- (a) the Product performs substantially in accordance with the Documentation, subject to clause 2.5 and clause 2.6; and
 - (b) the Services are performed with reasonable skill and care.

2.5 If a material error or material defect in the Product is discovered by Checksafe or notified to Checksafe by Customer, Checksafe shall use reasonable commercial efforts to rectify the error or defect according to the severity of the impact. Errors or defects causing an outage or serious degradation to the Product will be prioritised. Errors or defects of a minor or cosmetic nature will be deprioritised and Checksafe may determine that rectification is not necessary. Workarounds may be provided to overcome the severity of errors and defects.

2.6 Checksafe may release modifications or enhancements to the Product from time to time, and in some cases, discontinue features. Where changes are significant, Checksafe will endeavour to notify Customer (for example, by email). If Checksafe changes the fundamental nature of the Product in a detrimental way, Customer shall be entitled to terminate the Agreement on notice to Checksafe effective no earlier than the date that those changes come into effect and shall be entitled to a pro rata refund of any pre-paid fees in respect of the unused period of the Term.

2.7 Customer acknowledges that:

- (a) delivery of the Product involves the use of third-party service providers and systems, which Checksafe does not control; and
- (b) Checksafe cannot guarantee that access to the Product will be uninterrupted or error-free.

2.8 Customer acknowledges that the Agreement is with Checksafe and that Customer has no direct relationship with any Checksafe suppliers. Customer will not attempt to bring any action against any Checksafe suppliers in relation to the Product or the Services. This clause is for the benefit of those suppliers, however Checksafe may change these Terms and Conditions without any requirement to obtain consent from those suppliers.

2.9 Where Checksafe provides support, Checksafe is not obliged to provide support for Customer equipment, software or networks, or issues caused by Customer's failure to follow Checksafe instructions. However, Checksafe may do so with agreement from the Customer, in which case fees for Additional Services will apply.

3. Customer Set-Up Obligations

3.1 The Customer is solely responsible for obtaining all computing and telecommunications hardware, software, and services necessary to enable the Customer and the End Users to access and use the Product in accordance with the relevant specifications advised to the Customer by Checksafe from time to time (usually a computer with web browser and an Internet connection).

3.2 The Customer shall contribute any inputs required of it in a timely manner. If Customer is responsible for a delay that affects Checksafe's ability to perform its obligations, Checksafe shall be afforded an extension of time against any agreed timetable for performance of those obligations commensurate with that delay. For clarity, any Customer delay shall not affect the Commencement Date of the subscription to the Product and the Standard Support.

3.3 Unless agreed otherwise on the Order Form, Customer is responsible for uploading any Customer Data into the Product.

3.4 The Customer is permitted to allow End Users access to the Product. Any person who is not an End User must not be granted access to or use of the Product by the Customer or any End User. The Customer must advise

End Users that their use of the Product must be in compliance with the Acceptable Use Policy and Customer shall ensure that End Users comply with the Acceptable Use Policy and this Agreement.

- 3.5 The Customer is responsible for all acts and omissions of End Users, and those accessing the Product through Customer, and must procure that each of the End Users establishes and maintains a secure password for the purpose of accessing the Product.

4. Data and Privacy

- 4.1 Each Party shall comply with all Privacy Law applicable to it in relation to the collection, processing and storing of Personal Information in connection with this Agreement.
- 4.2 Any Personal Information collected, processed and used by Checksafe in connection with the provision of the Product or Services will be handled in accordance with Checksafe's privacy policy available at <https://www.checksafe.co.nz/privacy-policy.html>.
- 4.3 The Parties acknowledge and agree that Checksafe holds Customer Data solely on behalf of the Customer, and Checksafe will not use Customer Data for any purpose other than to provide the Product and Services to the Customer and perform its obligations under this Agreement.
- 4.4 Checksafe shall implement and maintain reasonable security safeguards to protect against loss, misuse or unauthorised access, use, modification, or disclosure of Personal Information in its possession or control in connection with this Agreement, subject to clause 11.
- 4.5 Customer warrants on an ongoing basis it has provided the appropriate notifications and obtained the necessary consents (including notifications to and consents from End Users and Individuals) to allow Checksafe to collect, process and use Personal Information, Customer Data and Customer Materials in accordance with this Agreement. Customer indemnifies and holds Checksafe harmless from and against any and all claims, loss, or liability suffered or incurred by Checksafe as a result of such processing, storage or use.
- 4.6 The Customer hereby grants Checksafe (or shall procure, as applicable) a royalty free licence during the Term to use, copy and otherwise process Customer Data and Customer Materials for the purposes of providing the Product and the Services and performing its obligations under this Agreement.
- 4.7 The Customer:
- (a) is solely responsible for all Customer Data and Customer Materials, including the nature, quality, legality, integrity and accuracy of the Customer Data and Customer Materials and the means by which it acquired the Customer Data and Customer Materials;
 - (b) is solely responsible for maintaining copies / back-ups of Customer Data entered into the Product.
- 4.8 To the extent Checksafe becomes aware of any Privacy Breach affecting Customer Data, Checksafe will:
- (a) investigate the Privacy Breach and take reasonable steps to contain and mitigate the effects of the Privacy Breach;
 - (b) for Privacy Breaches that are likely to cause serious harm to the affected individual, notify

the Customer of the Privacy Breach including providing details of the nature and extent of the Privacy Breach.

Nothing in this clause 4.8 is intended to prevent or limit Checksafe from complying with any notification obligation it may have under Privacy Law in relation to a Privacy Breach.

- 4.9 Checksafe will as soon as reasonably practicable notify Customer if it receives any request by an individual for access to, or correction of, their Personal Information in accordance with Privacy Law (**Access Request**) to enable Customer to respond to the Access Request in accordance with Privacy Law.
- 4.10 Customer acknowledges that Checksafe may collect data and other information about the use of the Products and Services by Customer or End Users for the purposes of conducting statistical analysis and market insights, provided such data and information does not identify any Individual.

5. Acceptable Use Policy

- 5.1 Customer must not, and shall procure that each of the End Users do not:
- (a) submit Customer Data to the Product and/or Customer Materials to Checksafe that:
 - (i) are defamatory;
 - (ii) violate any third party's rights of privacy;
 - (iii) contain, or comprises, an infringement of any third party Intellectual Property Rights;
 - (iv) contain any Malicious Code; or
 - (v) contain any objectionable or illegal content;
 - (b) use the Product in any way that is illegal;
 - (c) provide or permit access to the Product to any person except as authorised by Checksafe;
 - (d) attempt to copy, modify, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Product;
 - (e) attempt to derive the source code, source files, or structure of the software contained in the Product;
 - (f) access the Product to build a product or service which competes with all or any part of Checksafe's business;
 - (g) interfere with or cause interruption, damage or unintended effects to the Product, including its software, computing systems or networks; or
 - (h) introduce any Malicious Code into the Product or otherwise undermine the security of the Product.
- 5.2 If the Customer, or any of the End Users, becomes aware of or suspects any actual or threatened breach of the Acceptable Use Policy, or of any malfunction of the Product, the Customer must, and must procure the End Users, promptly notify Checksafe of any such actual or threatened breach or malfunction. Customer shall:

- (a) assist Checksafe with investigating any actual or alleged breach of the Acceptable Use Policy or any malfunction of the Product; and
- (b) take all reasonable and lawful measures within the Customer's control that are necessary and/or requested by Checksafe to stop the actual or threatened breach or malfunction and to mitigate its effects, including removing certain Customer Data from the Product.
- 5.3 The Customer acknowledges that Checksafe may, in addition, take all necessary steps to remove or disable access to certain Customer Data in relation to any suspected, threatened or actual breach of the Acceptable Use Policy or in relation to any malfunction of the Product.
- 6. Fees and Payment**
- 6.1 The Customer shall pay all Fees in accordance with this clause 6.
- 6.2 The Fees, as at the Commencement Date, are set out in the Order Form for:
- (a) Onboarding Services;
- (b) the Product subscription, including any additional Modules;
- (c) Standard Support;
- (d) Additional Support; and
- (e) any other agreed Services.
- 6.3 Unless otherwise stated in an Order Form, Fees for the:
- (a) Onboarding Services are payable in advance from the Commencement Date;
- (b) the subscription to the Product and Standard Support are payable annually in advance from the Commencement Date;
- (c) Additional Support is payable monthly in arrears; and
- (d) any other Services are payable as provided for on the Order Form.
- 6.4 The basis of charging (for example, by number of Individuals) is set out on the Order Form. The initial numbers, as at the Commencement Date, shall be specified on the Order Form. Customer shall report additional numbers (for example, increased number of Individuals) to Checksafe as changes occur. The Customer also acknowledges that Checksafe may audit the relevant numbers by undertaking checks of the Customer's account within the Product. Checksafe will invoice for such additional usage for the period from the date that the increase occurs to the end of the relevant Contract Year on a pro rata basis. Subject to the minimum Fees described on the Order Form, the Customer may submit reassessed numbers at least 45 days before the next Contract Year and Checksafe will invoice for the next Contract Year based on those numbers.
- 6.5 Any request for support that goes beyond Standard Support comprises Additional Support. Unless otherwise stated in an Order Form, the Fees for Additional Support and any other Services shall be based on time and materials at Supplier's then current rates and any reasonable expenses incurred. Additional Services are charged in 15 minute blocks.
- 6.6 Unless otherwise stated in an Order Form, the Customer shall pay within 30 days after the date of the invoice.
- 6.7 All amounts and fees stated or referred to in the Agreement:
- (a) shall be payable in New Zealand dollars to the address or account specified in the invoice or otherwise advised by Checksafe; and
- (b) are stated exclusive of any applicable GST or other Taxes.
- 6.8 Customer is responsible for paying all Taxes associated with its purchase of the Products and Services, excluding taxes based on Checksafe's net income. If Checksafe has the legal obligation to pay or collect Taxes for which Customer is responsible under this clause, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Checksafe with a valid tax exemption certificate authorised by the appropriate taxing authority.
- 6.9 Checksafe may apply a service charge of 1% per month or the highest lawful interest rate (whichever is lower) to all amounts not paid when due and may recover any debt collection costs from the Customer.
- 6.10 Checksafe may increase the Fees, including the minimum Fees specified on the Order Form, no more than once per annum by a maximum of NZ CPI (as published by Statistics New Zealand) plus 3% after the expiry of the Initial Term by providing not less than 90 day's prior written notice to the Customer. Checksafe may increase the Fees by more than such a maximum from the commencement of a Renewal Term, provided that Checksafe provides Customer not less than 120 days notice of the increase and if Customer does not wish to pay the increased Fees, it may terminate this Agreement on not less than 90 days' notice prior to the commencement of the Renewal Term. If Customer does not terminate this Agreement in accordance with this clause, it is deemed to have accepted the increased and/or new Fees.
- 6.11 Except as expressly set out in this Agreement, all Fees are non-refundable.
- 7. Suspension**
- 7.1 Without prejudice to any other right or remedies it may have, Checksafe shall be entitled to suspend the Customer's subscription to use the Product and/or End User's access to the Product in the event that Checksafe determines, in its opinion exercised in good faith that:
- (a) Customer has failed to pay the Fees by the date due for payment and has failed to pay the Fees within seven days of a payment reminder;
- (b) that the Customer or any of the End Users has failed to comply with the Acceptable Use Policy;
- (c) the Customer has not cooperated with any investigation by Checksafe into any suspected breach of this Agreement;
- (d) the Product or Customer Data may fail to comply with Applicable Law or infringe third party rights or are being used in a manner that threatens the security, integrity or availability of the Product or the Customer Data;
- (e) the Product or Customer Data has been accessed, used or manipulated without Checksafe's prior written consent;
- (f) suspension is necessary to protect other customers or users of the Product or the reputation of Checksafe;

- (g) suspension is required by Checksafe's third party service providers;
- (h) suspension is required by Applicable Law or an order of any court with jurisdiction.
- 7.2 Where the reason for any suspension is remedied to Checksafe's satisfaction, Checksafe shall reinstate access to the Product as soon as is practicable.
- 7.3 Checksafe shall also be entitled to suspend access to the Product from time to time in order to perform routine maintenance, emergency maintenance, updates, upgrades, or changes. Checksafe will use its reasonable efforts to provide advance notice of any scheduled downtime.
- 7.4 If Checksafe suspends access to the Product, other than due to the fault or cause of Customer or its End Users, for a period exceeding five business days then Checksafe will on request made within 30 days of the suspension refund to Customer a pro-rata portion of the amount paid in advance for the period of such suspension.
- 8. Audit**
- 8.1 Checksafe has the right (by itself or through its reasonable representatives) during the Term and for 12 months following to audit Customer, on at least 10 business days' notice and during normal business hours, to verify whether Customer is or was complying with the Agreement. Customer shall provide Checksafe with access to such personnel, premises, systems and records reasonably requested by Checksafe for the purposes of the audit.
- 8.2 However, nothing in this clause limits Checksafe from undertaking checks within the Product as permitted by clause 6.4.
- 9. Intellectual Property**
- 9.1 The Customer acknowledges that all Intellectual Property Rights in the Products and the Services, and the Documentation, will remain both during the Term and thereafter the property of Checksafe and/or its licensors.
- 9.2 Nothing in these Terms and Conditions limits Customer's ownership of any pre-existing Intellectual Property Rights in Customer Data or Customer Materials and any other Intellectual Property Rights Checksafe agrees in writing are owned by Customer (**Customer IP**) or Customer's rights to use Customer IP outside of the Product.
- 9.3 Where Customer or its End Users provide any feedback to Checksafe, Checksafe shall be entitled to use that feedback, without restriction or acknowledgement, and Checksafe shall be the sole owner of any resulting Intellectual Property Rights.
- 10. Confidentiality**
- 10.1 Each Party confirms that, unless it has the prior written consent of the other Party, it shall:
- (a) keep confidential at all times the Confidential Information of the other party;
- (b) except that it may disclose the other party's Confidential Information to its employees, contractors, or professional advisors on a need to know basis only and, in that case, ensure that any employee, contractor, or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clause 10.1(a).
- 10.2 The obligation of confidentiality in clause 10.1 does not apply to any disclosure or use of Confidential Information:
- (a) which is publicly available through no fault of the recipient of the Confidential Information or its personnel or professional advisers;
- (b) which was rightfully received by a Party to this Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
- (c) required by law (including under the rules of any stock exchange);
- (d) by Checksafe if required as part of a bona fide sale of its business (assets or shares, whether in whole or in part) to a third party, provided that Checksafe enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 10.
- 10.3 Each Party (as relevant) will delete, destroy or return all Confidential Information of the other within a reasonable time following a request to do so. However, each party may retain copies to the extent: (i) required by law or regulation or (ii) required to support the enforcement of a party's rights, or to defend a claim, under the Agreement.
- 11. Security**
- 11.1 Checksafe endeavours to ensure that the hosting provider for the Product will take appropriate and reasonable steps to keep Customer Data safe from unauthorised access, use or disclosure. However, it is not possible to guarantee that Customer Data will be completely secure at all times.
- 11.2 Customer must not undertake penetration testing or use the service provider's services in a manner which is intended to induce poor performance or failure of those service provider's services.
- 12. Third Party Software or Service**
- 12.1 The Product may link to other websites or systems over which Checksafe has no control. Any such links are for convenience only, and Checksafe is not liable in connection with your use of any such website or systems or their content.
- 13. Checksafe Warranties**
- 13.1 Checksafe warrants to the Customer that it has the right and power to:
- (a) enter into this Agreement;
- (b) perform its obligations in accordance with this Agreement; and
- (c) grant the rights that it is granting under this Agreement.
- 13.2 Checksafe warrants to the Customer that it shall comply with Applicable Law relevant to its performance under this Agreement.
- 13.3 Checksafe does not warrant that the use of the Product will be uninterrupted or error-free.
- 13.4 To the maximum extent permitted by law, except as otherwise outlined in this Agreement, the Product is provided "as is" and all other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this Agreement, any Order Form or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including any implied conditions, warranties or other terms as to

satisfactory quality, fitness for purpose, title or the use of reasonable skill and care.

14. Force majeure

14.1 Checksafe shall not be liable to the Customer for any failure to perform its obligations under this Agreement to the extent caused by Force Majeure.

14.2 Where Checksafe is affected by Force Majeure it shall:

- (a) promptly notify the Customer and provide reasonable information about the Force Majeure;
- (b) use reasonable efforts to overcome the Force Majeure; and
- (c) continue to perform its obligations to the extent practicable.

15. Liability

15.1 Nothing in this Agreement shall exclude or limit either Party's liability for to the extent that such liability may not be excluded or limited as a matter of Applicable Law. This clause 15.1 takes precedence over anything to the contrary in this clause 15.

15.2 The exclusions and limitations in this clause 15 apply to Checksafe's liability in contract, tort (including negligence), under an indemnity, or otherwise, in relation to any matter arising out of or in connection with this Agreement.

15.3 Checksafe shall not be liable for: (i) loss of profits, revenue, business or goodwill; (ii) costs of procuring substitute services; (iii) business interruption; (iv) loss of data (except that Checksafe shall be liable to restore data from back-ups provided by the Customer); (v) regulatory fines; or (vi) indirect, incidental, special or consequential loss, in each case suffered in connection with the Product or the Services even if such loss was reasonably foreseeable.

15.4 Any liability of Checksafe to Customer for loss or damage of any kind will be reduced to the extent that loss or damage was caused or contributed to by or on behalf of Customer (including its End Users).

15.5 Checksafe's liability under and in connection with this Agreement is limited to the amount paid by Customer for the relevant Product or Service to which the issue relates.

15.6 Checksafe's total aggregate liability in any 12 month period shall be limited to the total Fees paid by the Customer and received by Checksafe for the relevant Product or Service to which the issue relates during the 12 months immediately preceding the date of the event or first event in a series of events giving rise to the liability.

16. Indemnity

16.1 Checksafe indemnifies Customer against final damages awarded against Customer by a court of competent jurisdiction that arise from a third-party claim that Checksafe's provision of the Product, the Services or the Documentation infringes that third party's Intellectual Property Rights (**Third Party IP Claim**). If Customer wishes to rely on this indemnity, Customer must use and have been using the Product and the Services in accordance with this Agreement, immediately notify Checksafe of the third party claim made or threatened, make no admission of liability nor settle any claim without Checksafe's prior written consent, allow Checksafe to conduct the defence or settlement of the claim, and fully co-operate with

Checksafe in relation to any such claim. However, in no event shall Checksafe be liable to the Customer to the extent that the alleged infringement is a result of:

- (a) any portion of the Product supplied by a third party to Checksafe, other than the Checksafe software;
- (b) the Customer's breach of this Agreement;
- (c) modification of all or part of the Service (other than by Checksafe) in a manner not contemplated by the Documentation;
- (d) the combination of all or part of the Product with other products or technology not supplied by Checksafe;
- (e) the Customer's or any End User's use of the Product or the Services in a manner contrary to the instructions given by Checksafe; or
- (f) the Customer's use of the Product or the Services after notice of the alleged or actual infringement from Checksafe or any appropriate authority.

16.2 Customer indemnifies Checksafe and its affiliates, sub-contractors and suppliers against any costs or liabilities, including lawyer's fees on an indemnity basis, Checksafe or any affiliates, sub-contractors and suppliers incur to any third party, excluding any costs and expense Checksafe incurs in the ordinary course of providing the Product and the Services, arising in any way in connection with the use of the Product and the Services by Customer or End Users, including in respect of any breach of Applicable Law.

17. Termination

17.1 Without affecting any other right or remedy available to it, a Party may terminate this Agreement with immediate effect by giving written notice to the other Party if the other Party:

- (a) commits a material breach of this Agreement which breach is not capable of remedy or (if such breach is capable of remedy) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- (b) is subject to an Insolvency Event.

17.2 Without affecting any other right or remedy available to it, Customer may terminate this Agreement with immediate effect by giving 10 days' written notice to Checksafe if an event of Force Majeure prevents Checksafe from providing the Product for more than 60 days.

17.3 Without affecting any other right or remedy available to it, Checksafe may terminate this Agreement, in whole or (where practicable) in part, with immediate effect by giving written notice to Customer if:

- (a) Customer fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or
- (b) any event that gives rise to suspension pursuant to clause 7 (other than non-payment which is addressed above) continues or is likely in Checksafe's opinion to continue for any continuous period of 30 days without being

remedied to the reasonable satisfaction of Checksafe; or

- (c) a Third Party IP Claim is made; or
- (d) Checksafe's arrangement with a third-party provider who provides any input into the Product or the Services terminates or materially changes; or
- (e) the Agreement becomes illegal or contrary to any law, regulation, guideline or request of any regulatory authority.

Checksafe will endeavour to provide Customer with reasonable prior notice of any such termination, but may not be able to do so if the triggering event is under the control of a third party.

17.4 On termination of this Agreement for any reason:

- (a) the Order Form shall immediately terminate;
- (b) the Customer shall immediately pay all outstanding invoices and pay any amounts payable for the Product and the Services received prior to termination;
- (c) all subscriptions and licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Product and shall cease allowing End Users to access and use the Product;
- (d) Checksafe shall be entitled to immediately cease providing the Product and the Services;
- (e) Checksafe may destroy or otherwise securely dispose of any of the Customer Data in its possession in accordance with this clause unless Checksafe receives, no later than 10 days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of a copy of the Customer Data in the possession of Checksafe. Customer may also notify Checksafe that it wishes Checksafe to destroy or otherwise securely dispose of any of the Customer Data in its possession. Except where prohibited by law, Checksafe shall use reasonable commercial efforts to deliver to the Customer or dispose of such Customer Data within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all Fees outstanding at and resulting from termination. The Customer shall pay all reasonable expenses incurred by Checksafe in returning or disposing of Customer Data. However, Customer acknowledges that Customer Data may exist in the back-ups and archives of Checksafe's third-party hosting provider and that complete destruction and disposal is subject to the data deletion policies of that third party; and
- (f) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

17.5 If the Agreement is terminated, other than due to the fault or cause of Customer or its End Users, the Customer shall

be entitled to a pro rata refund of any pre-paid fees in respect of the unused period of the Term.

17.6 Any provision of this Agreement which is either expressed to survive termination or by implication ought reasonably to survive termination shall so survive the expiry or termination of this Agreement, including clauses 4, 6, 8, 10, 15, 17, and 19.

18. Amendment to this Agreement

18.1 Checksafe may change these Terms and Conditions from time to time. Checksafe will endeavour to provide reasonable prior notice of the changes that Checksafe considers to be material to customers, but may not be able to do so if the triggering event is under the control of a third party (such as a third-party provider of an input into the products and Services).

18.2 Subject to clause 18.3, Customer acknowledges that any use by the Customer of the Product and the Services after any amendment to the terms of this Agreement will be deemed to be the Customer's acceptance and agreement to be bound by the amended terms in respect of all use of the Product or the Services after the time of amendment.

18.3 Where the changes to the Terms and Conditions are onerous to the Customer, Customer shall be entitled to terminate the Agreement by giving written notice to Checksafe, provided that:

- (a) Customer must issue its termination notice within 30 days from the date that the changes are notified; and
- (b) termination will be effective no earlier than the date the changes come into effect,

in which case Customer shall be entitled to a pro rata refund of any pre-paid fees in respect of the unused period of the Term.

18.4 If Customer does not terminate the Agreement in accordance with this clause within 30 days from the date that the changes are notified, Customer is deemed to have accepted the changes to the Terms and Conditions and the Product subscription will continue on the updated Terms and Conditions.

19. General

19.1 Notices to Checksafe must be sent by email to support@checksafe.co.nz or to any other email address notified to Customer by Checksafe. Checksafe may contact Customer by email, post or personal delivery to the most recent email, postal or physical address Customer has provided to Checksafe.

19.2 This Agreement constitutes the entire agreement and understanding between Customer and Checksafe in relation to the Product and the Services. Customer acknowledges that in entering into the Agreement it has not relied on any representations made by Checksafe that are not expressed in the Agreement. This clause will not be construed as excluding either party's liability for fraudulent statements.

19.3 Customer warrants that it is acquiring access to the Product and Services in trade. As Customer is acquiring access to the Product and Services in trade, the guarantees implied by the Consumer Guarantees Act 1993 are expressly excluded and Customer and Checksafe agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986 to the extent necessary to permit the inclusion of this clause.

- 19.4 Customer may not, without Checksafe's prior consent, assign, transfer or otherwise deal in any way with (or attempt to do any such thing) the benefit of, or any of Customer's rights or obligations under, this Agreement. Customer agrees that it is and will remain solely responsible and liable for its employees, contractors, subcontractors and any person accessing the Product or receiving the Services through Customer.
- 19.5 Checksafe may assign, transfer or otherwise deal in any way with the benefit of, or any of Checksafe's rights or obligations under, this Agreement without the prior consent of the Customer.
- 19.6 Any variation to this Agreement must be agreed in writing by the Parties, except as otherwise provided for in this Agreement.
- 19.7 No right, power or remedy provided by law or under this Agreement will be waived, impaired or precluded by any delay or omission to exercise it.
- 19.8 If any provision in this Agreement is lawfully illegal, unenforceable or invalid, it may be severed and the determination will not affect the remainder of this Agreement which will remain in force.
- 19.9 This Agreement is governed by New Zealand law.
- 19.10 Should any dispute arise between the Parties, the Parties will attempt to resolve it in good faith by negotiation. If the dispute is not resolved through negotiation, the New Zealand courts will have non-exclusive jurisdiction over all claims that may arise out of or in connection with this Agreement.

20. Definitions and interpretation

- 20.1 The definitions and rules of interpretation in this clause apply in this Agreement.
- Agreement** means these Terms and Conditions and the relevant Order Form.
- Acceptable Use Policy** means the and the terms of clause 5 and the acceptable use policy provided within the Product, as updated from time to time.
- Additional Support** means support by email, telephone, or video-conference or in-person (in person available in Tauranga only or with specific agreement by Checksafe) to provide ongoing training and to manage any questions or technical issues provided at an hourly rate, once the support hours used by the Customer exceeds the number of support hours specified on the Order Form comprising Standard Support.
- Applicable Law** means all laws and regulations and binding codes of practice applying to the person or circumstances in question including any standards or rules imposed by any governmental or regulatory authorities.
- Commencement Date** means the date specified as such on the Order Form, which is the date that the Product, and/or the Services as the case may be, shall be made available to the Customer.
- Confidential Information** means information in any form, whether oral or written, of a business, financial or technical nature which ought reasonably to be known to be confidential and which is disclosed by either party in the course of the Agreement.
- Contract Year** mean the 12-month period starting on the Commencement Date or the anniversary of the Commencement Date as the case may be.

Customer Data means content or data provided by Customer to Checksafe for uploading to the Product, or uploaded by the Customer as a result of using or accessing the Product, and includes Personal Information collected by the Customer from End Users or Individuals and stored within the Product.

Customer Materials means information, material and/or content that is provided by the Customer to Checksafe.

Documentation means any system flow charts, instructions or other material provided to Customer by Checksafe, other than marketing material, that sets out a formal description of the Product and the user instructions for the Product as updated from time to time.

End User means an individual who is authorised by the Customer to access the Product on behalf of the Customer for administrative purposes.

Fees means the fees payable by Customer to Checksafe for the Product and the Services as set out in the relevant Order Form, as updated from time to time in accordance with these Terms and Conditions.

Force Majeure means circumstances beyond Checksafe's reasonable control.

GST has the meaning given to that term in the Goods and Services Tax Act 1985.

Individuals mean any officers, employees, contractors or personnel (including personnel of any sub-contractors) of the Customer who are tracked within the Product.

Insolvency Event means that a Party:

- (a) is removed from the companies register or has a liquidator, receiver, administrator or statutory manager appointed or any equivalent worldwide;
- (b) becomes (or is deemed to be) insolvent or is unable to pay its debts when they become due or is presumed under statute to be unable to pay its debts; or
- (c) makes or proposes any assignment to, or enters into any arrangement for the benefit of, all or some of its creditors (other than for the purposes of a solvent restructuring).

Intellectual Property Rights means copyright and all other legal and beneficial intellectual and industrial property rights (including patents, design rights (whether registered or unregistered), trade marks (whether registered or unregistered), database rights, know-how and confidential information) whether conferred by contract, common law or otherwise throughout the world no matter what such rights may be known as in any particular country in the world.

Initial Term means, unless otherwise specified on the Order Form, the period beginning on the Commencement Date and continuing for two years.

Malicious Code means code, files, scripts, agents or programs intended to do harm, including viruses, worms, time bombs and Trojan horses.

Module means specific modules for the Product.

Onboarding Services means the initial assistance with system set-up and loading of Customer Data, training and support services for the number of hours specified during the establishment of the Product subscription.

Order Form means any order for the provision of products or services agreed in writing between Customer and Checksafe incorporating these Terms and Conditions.

Personal Information has the meaning given to that term in the New Zealand Privacy Act 2020.

Privacy Breach means any unauthorised or accidental access to, or disclosure, alteration, loss, or destruction of Personal Information, or an action that prevents a Party from accessing Personal Information on either a temporary or permanent basis.

Privacy Law means any applicable statute, regulation, subordinate legislation or the common law and in force from time to time that the Parties are subject to and includes the New Zealand Privacy Act 2020, and any applicable codes or practice, directive, orders, guidelines or other requirement of any regulator having the force of law.

Product means the software-as-a-service offering identified on the Order Form as provided by the Checksafe.

Services means the implementation, training, support or other services described on the relevant Order Form or in these Terms and Conditions as the case may be.

Standard Support means assistance by email, telephone, video-conference or in-person (in person available in Tauranga only or with specific agreement by Checksafe) to provide ongoing training and to manage any questions or technical issues for the number of support hours specified on the Order Form.

Taxes any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including goods and services, value-added, use or withholding taxes.

Term means the Initial Term and any subsequent Renewal Terms.

Territory means the location stated as such on the Order Form.

20.2 In this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) a person includes its agents, successors and permitted assigns;
- (c) a reference to hours, days, weeks, months or years means hours, calendar days, weeks, months or years, New Zealand time;
- (d) a reference to a document or law includes all amendments, supplements or replacements to that document or law;
- (e) headings are for convenience only and do not affect the interpretation of this Agreement;
- (f) the words “including”, “particularly”, “such as” and similar expressions are do not limit the general interpretation of the surrounding words;
- (g) in the case of conflict or ambiguity between any provision contained in this Agreement and an Order Form, the provision in these Terms and Conditions shall take precedence, unless the Order Form specifically states that it overrides the provisions of these Terms and Conditions.