

TERMS AND CONDITIONS

Glossary	
Acceptable Use Policy	The acceptable use policy for AppCheck ^{NG} as in effect from time to time, the current version of which is accessible at https://scanner.appcheck-ng.com/assets/acceptable_use_policy.pdf .
AppCheck	AppCheck Ltd, a company registered in England and Wales with registered number 06888174 and VAT number GB203666327.
AppCheck^{NG}	The vulnerability scanning service offered by AppCheck, described in more detail in the documentation.
Applicable Law	Any legislation which is applicable to the performance of Scans or any of the other Services performed under this agreement, including the Computer Misuse Act 1990, the Investigatory Powers Act 2016 and Data Protection Legislation.
Client	The entity which subscribes to AppCheck ^{NG} , as named on the cover page.
Client Branding	The Client's name, logo and any other trade mark or branding of the Client.
Client Content	Any content which is stored on a Client System or recorded in the logs of a Scan (other than content which was provided to the Client by AppCheck).
Client System	A system or network which the Client uses exclusively in connection with its own business requirements and which it has the right to Scan.
Contract Year	A 12 month period, the first Contract Year commencing on the start date of this agreement and each subsequent Contract Year commencing on an anniversary of that date.
Data Protection Legislation	The UK GDPR, the Data Protection Act 2018 and any other applicable data protection legislation as may be in force from time to time.
Documentation	The user documentation which describes AppCheck ^{NG} and provides guidance as to its proper use.
Fees	The Subscription Fee together with any other fees for Services or Third Party Services.
Intellectual Property Rights	Any and all intellectual property rights including patents, trade marks, copyright, rights in databases, domain names, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with the right to apply for registration of and/or register such rights and any and all goodwill relating or attached to it and all extensions and renewals of it.
Professional Services	Any professional services which AppCheck may agree to provide from time to time in addition to those included within the Subscription to assist the Client to get the full benefit from its Subscription (such as implementation, consultancy, development work or training), as specified on the cover page.
Scan, Scanning, Scanned	A scan of the Client System(s) selected by the Client to identify and confirm vulnerabilities through safe exploitation and to generate a report documenting any identified vulnerabilities.
Services	The services which AppCheck provides to the Client under this agreement, including any services included within the Subscription and any Professional Services which AppCheck may agree to provide from time to time (but excluding Third Party Services).
Subscription	A subscription entitling the Client to access and use AppCheck ^{NG} in accordance with these terms (subject to payment of the Subscription Fee), which includes access to the Documentation, the hosting of the AppCheck ^{NG} service and the chosen Support package, as described in more detail in these terms.
Subscription Fee	The fee payable in consideration of the Subscription in accordance with the standard subscription charges, as specified on the cover page or as varied from time to time.
Support	The support which AppCheck provides to the Client in respect of its use of AppCheck ^{NG} , which may (depending on the package selected by the Client) include enhanced support and/or a managed service.
Third Party Service	Any service offered by a third party service provider which the Client may purchase through AppCheck, as specified on the cover page or as ordered from time to time.
User	An individual person who accesses AppCheck ^{NG} as part of the Client's Subscription.
Working Day	Any day other than a Saturday, Sunday or public holiday in England.
Working Hours	9am to 5pm (UK time) on a Working Day.

THE APPCHECK^{NG} SERVICE

- 1.1 A Subscription to AppCheck^{NG} entitles the Client and its Users to the non-exclusive right to access and use AppCheck^{NG} to Scan the Client System(s) during the term of the Subscription in accordance with these terms.
- 1.2 AppCheck^{NG} is offered on a hosted basis and can be used without downloading any software. The web interface can be accessed over the internet, and Scans can also be run remotely.
- 1.3 AppCheck^{NG} offers an optional service enabling the Client to download one or more limited copies of the AppCheck^{NG} scanning engine for local deployment (each an **Internal Hub**). The number of Internal Hubs licensed (if any) and the scope of the licence is specified on the cover page. Where the Client has purchased a licence for the Internal Hub, it is made available on a non-exclusive, non-transferable, non-sublicensable licence during the term of the Subscription as part of the AppCheck^{NG} service. Where the Client is using an Internal Hub, it agrees that it shall:
 - 1.3.1 not copy the Internal Hub save where and to the extent necessary to enjoy the benefit of its Subscription, nor make the Internal Hub available to any third party (the Client must not duplicate the Internal Hub to enable it to be run on more Client Systems than permitted by its licence);
 - 1.3.2 keep all copies of the Internal Hub secure and supervise and control use of the Internal Hub to ensure that it is only used in accordance with these terms; and
 - 1.3.3 not make any alterations or modifications to the Internal Hub, nor disassemble, decompile, reverse engineer or create derivative works based on any part of the Internal Hub (save where expressly permitted by law).
- 1.4 AppCheck may from time to time make changes to AppCheck^{NG}, including to improve its functionality, enable it to address newly identified or developing threats, add new features, remove obsolete features, fix errors or address feedback. AppCheck aims to minimise any disruption caused as a result of the implementation of such changes.
- 1.5 The Client shall only use AppCheck^{NG} (and procure that all its Users only use AppCheck^{NG}):
 - 1.5.1 in accordance with these terms, the Documentation and the Acceptable Use Policy;
 - 1.5.2 in good faith and in the manner in which is intended; and
 - 1.5.3 in accordance with all Applicable Law.
- 1.6 The Client must not in any circumstances use AppCheck^{NG} in a manner which will or is likely or calculated to damage AppCheck's reputation, the reputation of AppCheck^{NG} or that of any other client, or which is unlawful, fraudulent or malicious, or has any unlawful, fraudulent or malicious purpose or effect.
- 1.7 The Client shall immediately notify AppCheck if it believes or suspects either that may have breached these terms, that a User (or other person using a User's access credentials) may have used AppCheck^{NG} in breach of these terms or the Acceptable Use Policy or that any User's access credentials may have been compromised.
- 1.8 AppCheck shall be entitled to suspend access to AppCheck^{NG} (or any part of it) without liability to the Client immediately and without notice or to take such action as it may in its discretion think appropriate if it reasonably believes:
 - 1.8.1 it is necessary to prevent abuse or misuse of AppCheck^{NG}, including any use in contravention of these terms;
 - 1.8.2 it is necessary to prevent potential harm to AppCheck, another client or any third party, including any potential damage to or impact on any third party network or service; or
 - 1.8.3 the Client is otherwise in breach of these terms.Promptly following such suspension AppCheck shall notify the Client of the suspension, the reason for the suspension and what steps the Client can take so that the suspension can be brought to an end.

2. SCANNING AND REPORTING

- 2.1 A Scan may be performed:
 - 2.1.1 by the Client on its own initiative using the AppCheck^{NG} service; or
 - 2.1.2 where the Client has selected a managed service (as indicated on the cover page), by an AppCheck consultant.
- 2.2 There is no limit on the total number of Scans that the Client may carry out, but to ensure fair use of AppCheck^{NG} there is a restriction on the number of Scans which can be carried out concurrently. Scans may only be carried out within the licensed number of applications and IPs. The maximum number of concurrent Scans, and the number of licensed applications and IPs, is specified on the cover page.
- 2.3 For the purposes of this agreement and all Applicable Law, the Client hereby expressly authorises AppCheck to access (or attempt to access) the Client System (and any programs or data held on the Client System) and to perform any actions, operations or exploits which AppCheck considers reasonably necessary or desirable to enable it to identify and confirm vulnerabilities present on the Client System.
- 2.4 AppCheck^{NG} is a sophisticated vulnerability scanning tool which contains various safeguards to protect the Client System. Specifically, AppCheck warrants that:
 - 2.4.1 Scans will only be carried out in accordance with a request by the Client, and only on the date, at the time and on the application or IP nominated by the Client (or, where the Client has selected a managed service, in accordance with the agreed scope);
 - 2.4.2 AppCheck^{NG} can be used only to scan applications or IPs which have been pre-notified to AppCheck by the Client and will not allow a User to Scan any application or IP which has not been pre-notified; and
 - 2.4.3 in no circumstances will a Scan maliciously cause damage to any system.
- 2.5 However, the Client acknowledges and accepts that:
 - 2.5.1 the methods used by AppCheck may include methods and techniques of a type usually deployed by hackers or which are otherwise designed to cause systems to function in a manner other than that which is intended or to gain unauthorised access to systems, networks and the data stored within them;

- 2.5.2 the Scanning performed by AppCheck may expose vulnerabilities and/or cause disruption to, malfunction of or other unexpected functioning of the Client System and, particularly where the Client makes use of optional services such as an exploitive Scan, carries a substantial risk of loss of service, hardware failure and loss, compromise or corruption of data; and
 - 2.5.3 if a Scan is carried out in a manner which adversely affects the rights and interests of a third party, this may give rise to criminal and/or civil liability.
- 2.6 Due to the nature of AppCheck^{NG}, it is essential that:
- 2.6.1 the Client only uses AppCheck^{NG} to Scan (or requests AppCheck consultants to Scan) applications or IPs which are on a Client System;
 - 2.6.2 where the Client System is provided by a third party hosting provider, the Client provides the hosting provider with advanced notice of the Scan and obtains its express written approval; and
 - 2.6.3 the Client carefully checks the details of all applications or IPs supplied to AppCheck for Scanning and ensures that these are correct and will not result in a Scan being performed on a system which the Client is not authorised to Scan.

By supplying AppCheck with an application or IP to Scan, the Client warrants and represents that it is entitled to authorise AppCheck to Scan that application or IP.

- 2.7 In addition, AppCheck strongly advises the Client to:
- 2.7.1 complete a full backup of all data which is contained in or available through any devices connected to the Client System prior to performing any Scan, and to ensure that such backup is stored remotely from the Client System;
 - 2.7.2 perform the Scan at a time when any adverse impact on the Client System is unlikely to cause a material impact to the Client's business; and
 - 2.7.3 ensure that it has sufficient qualified and knowledgeable representatives available to respond promptly to any vulnerability identified and to deal with any adverse impact on the Client System that a Scan may cause.
- 2.8 Except for the safeguards set out in clause 2.4 (which AppCheck is responsible for), the Client acknowledges and agrees that it is fully responsible for its use of AppCheck^{NG} and for ensuring that neither its use of AppCheck^{NG} nor AppCheck's proper performance of the Services will result in any criminal and/or civil legal action arising. Examples of circumstances which might result in legal action include:
- 2.8.1 the Client's use of AppCheck^{NG} to Scan a system or network which it is not authorised to Scan (including where it has not obtained the necessary approval from a third party hosting provider in accordance with clause 2.6.2);
 - 2.8.2 the performance of a Scan on a Client System causing loss or damage to any third party, such as a third party whose use of that Client System is disrupted by the Scan;
 - 2.8.3 an unauthorised third party gaining access to AppCheck^{NG} using the Client's access credentials and misusing AppCheck^{NG}; and/or
 - 2.8.4 the Client's use of AppCheck^{NG} or the proper performance of the Services by AppCheck resulting in the Client or AppCheck being alleged to have breached any Applicable Law.
- 2.9 If, notwithstanding clause 2.8, any criminal and/or civil legal action is brought against AppCheck as a result of the Client's use of AppCheck^{NG} or AppCheck's proper performance of the Services then AppCheck will promptly notify the Client about the legal action and, unless that legal action arose as a result of AppCheck's failure to implement the safeguards set out in clause 2.4 or AppCheck's other breach of these terms:
- 2.9.1 AppCheck will provide the Client with any reasonable cooperation which the Client requires to enable the Client to investigate the legal action and take steps to defend or settle the legal action (provided that any steps must be taken in the Client's own name and not in the name of AppCheck); and
 - 2.9.2 If AppCheck incurs any costs, claims, damages, liabilities, losses and/or demands relating to or arising from or in connection with the legal action, the Client will on demand reimburse AppCheck in full for all such sums incurred.

- 2.10 AppCheck^{NG} is designed to identify and confirm vulnerabilities and report on any vulnerabilities to the Client. Whilst the report will contain recommended fix steps and links to solutions if vulnerabilities are identified, AppCheck^{NG} does not (and is not intended to) fix, remedy, prevent or eliminate any vulnerabilities or other issues. The Client is solely responsible for securing and protecting its systems.

3. SUPPORT AND MANAGED SERVICE

- 3.1 AppCheck offers various Support packages for AppCheck^{NG}. The Support package selected by the Client is specified on the cover page.
- 3.2 All Support packages include administrative Support access through the AppCheck helpdesk and access to the Documentation.
- 3.3 If the Client has any queries as to how to use AppCheck^{NG} it should in the first instance consult the Documentation. Should the Client be unable to resolve its issue by means of reading the Documentation, it may contact AppCheck using the Support contact details provided for this purpose from time to time.
- 3.4 Any suspected defects or faults in AppCheck^{NG} should be reported as soon as possible upon being identified, and in any event within 48 hours of coming to the Client's attention. All suspected defaults or faults reported in this manner will be reviewed by AppCheck as soon as reasonably practicable and, where verified, resolved in accordance with clause 7.2. The Client agrees to provide all such information and assistance as AppCheck may reasonably request to enable it to recreate and remedy the defect or fault.
- 3.5 Where the Client has selected a Support package which includes a managed service (as identified on the cover page), AppCheck will provide suitably skilled and experienced consultants to assist the Client to scope and configure Scans and understand and analyse results. Any opinion expressed by an AppCheck consultant will be the genuine and considered

professional opinion of that consultant, and (where applicable) provides a potential option which the Client make choose to act on. However, the final decision as to which option (if any) to select rests solely with the Client.

4. PROFESSIONAL SERVICES

- 4.1 Any Professional Services will be provided to substantially conform to the agreed specification or, where there is no agreed specification, in accordance with reasonable standards.
- 4.2 AppCheck will use reasonable endeavours to meet any agreed timescales, but the Client acknowledges that any timescales given are for indicative purposes only.
- 4.3 AppCheck shall be responsible for the provision of the consultants who provide the Professional Services. In the event that any individual become unavailable due to (for example) accident, illness, termination of employment or redeployment, AppCheck shall use reasonable endeavours to provide a suitable replacement as soon as reasonably practicable.

5. THIRD PARTY SERVICES

- 5.1 Where the Client orders a Third Party Service, AppCheck will procure access to that Third Party Service on behalf of the Client.
- 5.2 The Client acknowledges that AppCheck is not the provider of any Third Party Service and therefore:
 - 5.2.1 the Client's ability to use the Third Party Service will be conditional upon the Client entering into a direct agreement with the provider of that Third Party Service (for example by accepting an end user licence agreement when registering for that service); and
 - 5.2.2 AppCheck cannot and does not provide any warranties or guarantees in respect of the Third Party Service or take any responsibility for provision of the service or the use of that service by the Client and the Client acknowledges that any rights or remedies in respect of the same must be pursued directly with the provider.
- 5.3 The Client shall use Third Party Services in good faith and in the manner in which is intended and in accordance with any terms or other requirements or directions imposed by the provider of that service. The Client shall not take any steps which are intended or likely to cause the provider of the Third Party Service to terminate its relationship with AppCheck or to pursue any claim against AppCheck, and the Client will on demand reimburse AppCheck in full for all costs, claims, damages, liabilities, losses and/or demands relating to or arising from or in connection with a breach by the Client of its obligations under this clause 5.3.

6. USERS

- 6.1 Save as otherwise authorised in writing, the Client may only allow its employees, consultants and agents to use AppCheck^{NG}, and must in no circumstances make access to AppCheck^{NG} available to any third party. Users shall be permitted access only to the extent that they are using AppCheck^{NG} for the Client's business purposes.
- 6.2 It is the Client's responsibility to ensure that all of its Users choose and maintain secure passwords and that all access credentials for AppCheck^{NG} are kept confidential and only used by its authorised Users. The Client shall be fully responsible for any acts or omissions of any person accessing AppCheck^{NG} using its access credentials (whether or not with the Client's permission), as if such acts or omissions were the acts or omissions of the Client.
- 6.3 The Client shall ensure that all Users are aware of all applicable terms in respect of use of AppCheck^{NG}.

7. WARRANTIES

- 7.1 AppCheck warrants that the functionality of AppCheck^{NG} will substantively conform to the Documentation. AppCheck will use reasonable endeavours to ensure that AppCheck^{NG} is available for the use of all Users during Working Hours.
- 7.2 By the nature of AppCheck^{NG}, AppCheck cannot warrant that it will be entirely error free. However, AppCheck shall use its reasonable endeavours to remedy any material error reported by the Client as soon as reasonably and commercially practicable following such report. In the event that the Client does experience issues with AppCheck^{NG} it shall report the problem using the procedure set out in the Documentation, and the Client agrees that this clause 7.2 shall be its sole and exclusive remedy for any problems or deficiencies with AppCheck^{NG}.
- 7.3 AppCheck is constantly working on AppCheck^{NG} to ensure that it can identify and confirm as many vulnerabilities as possible, including updating AppCheck^{NG} as and when new vulnerabilities and exploits are discovered. However, by the nature of the service it is impossible for AppCheck to guarantee that AppCheck^{NG} will be able to identify all vulnerabilities (particularly where such vulnerabilities are not yet known to the security industry), and AppCheck does not warrant or guarantee that a Scan will identify all vulnerabilities present (and accordingly a "successful" Scan does not guarantee that the Client System Scanned is free of vulnerabilities or other insecurities).
- 7.4 AppCheck warrants that all Services will be provided with reasonable skill and care.
- 7.5 The Client warrants that all information and documentation provided by it in relation to the Subscription or any Services it orders is true, complete and accurate.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All rights, title and interest (including Intellectual Property Rights) in AppCheck^{NG} (including in the Internal Hub described in clause 1.3) and in any report generated by AppCheck^{NG} shall, as between AppCheck and the Client, belong to the AppCheck, and nothing in this agreement shall operate to transfer any such rights to the Client.
- 8.2 The Client is entitled to use AppCheck^{NG} as described in these terms and to use any report generated for the purposes of reviewing its findings and acting on them to address any vulnerabilities identified.
- 8.3 Subject to clause 8.4, the Client acknowledges that to the extent it acquires any rights in AppCheck^{NG} it hereby assigns such rights absolutely (by way of present assignment of future rights) to AppCheck. Where applicable the Client shall be entitled to use such parts of AppCheck^{NG} in accordance with its Subscription.
- 8.4 The Client shall retain all rights in the Client Branding and Client Content. The Client grants AppCheck a non-exclusive royalty free licence to use such Client Branding and Client Content for the purposes of providing AppCheck^{NG} and the Services and, in the case of the Client Branding, in publicity material.

- 8.5 Subject to clause 8.6, AppCheck will indemnify, keep indemnified and hold the Client harmless from and against any and all losses, damages, claims, costs and expenses (including legal expenses on a solicitor / own client basis) suffered or incurred by or awarded against the Client as a result of or in connection with any claim that use of AppCheck^{NG} and/or the Documentation in accordance with these terms, and/or receipt of the Services infringes the Intellectual Property Rights of any third party subsisting in the United Kingdom (a **Claim**).
- 8.6 The Client shall:
- 8.6.1 give AppCheck written notice of any Claim;
- 8.6.2 allow AppCheck to assume control of the negotiation, defence and settlement of any Claim and not make any admissions or compromise in relation to the same; and
- 8.6.3 at AppCheck's expense, give AppCheck such assistance as AppCheck may reasonably require in the negotiation, defence, settlement or compromise of each Claim.
- 8.7 Without prejudice to clause 8.5, where AppCheck becomes aware of any claim or potential claim that AppCheck^{NG} or the Documentation and/or receipt of any Services infringes any Intellectual Property Rights of any third party, AppCheck may at its option:
- 8.7.1 suspend access to AppCheck^{NG} (or the affected part), withdraw the Documentation (or the affected part) and/or suspend any other Services (or the affected parts);
- 8.7.2 modify AppCheck^{NG} and/or the Documentation to remedy the infringement; and/or
- 8.7.3 terminate the Client's Subscription.
- 8.8 Where access to AppCheck^{NG} or the provision of any other Services is suspended or terminated pursuant to clause 8.7 AppCheck shall make a pro rata refund to the Client calculated by AppCheck (acting reasonably) based on the proportion of AppCheck^{NG} or the Services (as applicable) not received and the period over which it was not received.

9. FEES

- 9.1 The Client shall pay the Fees as described on the cover page.
- 9.2 Where and to the extent that Services are provided from any location other than AppCheck's own premises, the Client shall be responsible for all and any reasonable expenses incurred by AppCheck in providing the Services.
- 9.3 All invoices are payable within 30 days of the date of the invoice.
- 9.4 All Fees are exclusive of VAT which is chargeable in addition at the prevailing rate. VAT shall also be payable on expenses where applicable.
- 9.5 AppCheck shall be entitled to review the Fees from time to time. Should AppCheck make any changes to the Fees these shall take effect from the next renewal date following the revised fees coming into effect, provided that AppCheck has notified the Client of the change not less than four months prior to such date. AppCheck may also increase the Fees in respect of Third Party Services at any time to reflect increases in the fees charged by the relevant provider.
- 9.6 AppCheck may suspend access to AppCheck^{NG} or the provision of any other Services without liability if any amount due to it from the Client is not paid by the due date and may maintain such suspension until all outstanding sums due to AppCheck from the Client have been paid. This does not affect the liability of the Client to pay for the Subscription and any other Services during any period of suspension.
- 9.7 All amounts due to AppCheck shall be paid by the Client to AppCheck in full without any set-off, counterclaim, deduction or withholding.

10. TERM AND TERMINATION

- 10.1 The Subscription starts on the date shown on the cover page.
- 10.2 The Subscription runs for the initial term shown on the cover page, and after the end of the initial term will automatically renew on an annual basis unless and until terminated in accordance with this clause 10.
- 10.3 Either AppCheck or the Client may choose not to renew the Subscription by giving the other not less than three months' written notice of such intention. In this case, the Subscription will expire at the end of the then current term.
- 10.4 AppCheck may terminate this agreement immediately on written notice if the Client:
- 10.4.1 commits an irremediable breach of these terms, persistently commits remediable breaches or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same;
- 10.4.2 commits a serious breach of these terms, including using AppCheck^{NG} to Scan any system or network where it is not authorised to do so, doing anything which places (or is likely to place) AppCheck in breach of any Applicable Law or allowing any person other than an authorised User to access AppCheck^{NG};
- 10.4.3 fails to pay any amount due to AppCheck as it falls due (under any agreement between the parties); or
- 10.4.4 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere.
- 10.5 Unless otherwise expressly agreed to the contrary, this agreement (including the provision of any Professional Services and any Third Party Service) shall automatically end if the Subscription expires or terminates for any reason.
- 10.6 AppCheck may also terminate a Third Party Service (without affecting the continuation of the Subscription or the rest of this agreement) if the provider of that Third Party Service:
- 10.6.1 ceases to trade or to offer that Third Party Service (either generally or through AppCheck specifically); or

- 10.6.2 requires AppCheck to terminate the Client's right to use that Third Party Service for any reason (for example due to the Client's misuse of that service).
- 10.7 In the event of termination of this agreement for any reason:
- 10.7.1 except where expressly stated to the contrary in these terms, any Fees already paid shall be non-refundable;
 - 10.7.2 any amounts invoiced as at the date of termination shall become immediately due and payable;
 - 10.7.3 AppCheck may invoice for any Services provided up until the date of termination and any expenses incurred in respect of Services, and those invoices shall be immediately due and payable;
 - 10.7.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and
 - 10.7.5 the Client's (and all Users') access to AppCheck^{NG} shall be withdrawn by AppCheck and the Client shall not (and shall ensure that the Users do not) make any further attempt to access AppCheck^{NG}.
- 10.8 The termination of this agreement shall not affect the continuation of any terms which are expressly or implicitly intended to survive termination, including clauses 8, 10, 11, 12, 13, 15 and 16.

11. CONFIDENTIALITY

- 11.1 Each party undertakes that it shall not at any time disclose to any third party any confidential information (being any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, clients, suppliers or methods of one party and disclosed to or otherwise obtained by the other party in connection with this agreement), nor use such information for any purpose other than to exercise its rights and perform its obligations under this agreement, except as otherwise permitted by these terms or with the prior written consent of the other party.
- 11.2 The provisions of this clause 11 shall not apply to any confidential information that the receiving party can demonstrate:
- 11.2.1 is in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this agreement or any other obligations of confidentiality;
 - 11.2.2 is or was lawfully received from a third party not under an obligation of confidentiality with respect to it;
 - 11.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or
 - 11.2.4 was developed independently of and without reference to confidential information disclosed by the other party, provided always that, except where it is prohibited from doing so by law or court order, a party wishing to rely on an exception contained in this clause 11.2 shall provide the other with at least ten (10) days' written notice of its intention to do so, such notice specifying details of the exception to be relied upon and the information concerned.
- 11.3 Each party shall be entitled to divulge the other party's confidential information to its employees, agents, directors, officers, authorised sub-contractors, professional advisors and consultants who have a need to know the same in connection with this agreement, provided that the receiving party shall ensure that such persons are aware of, and shall procure that such persons comply with, these obligations as to confidentiality.

12. DATA PROTECTION

- 12.1 In this clause 12, the terms **data subject**, **personal data**, **personal data breach** and **process** have the meaning given to them in the UK GDPR.
- 12.2 Each party agrees that, in the performance of its respective obligations set out in these terms, it shall comply with the provisions of applicable Data Protection Legislation to the extent it applies to each of them. For the avoidance of doubt, nothing in this clause 12 or otherwise in these terms relieves either party of its own direct responsibilities and liabilities under Data Protection Legislation.
- 12.3 Where AppCheck^{NG} is used to Scan a Client System containing personal data, it is possible that the Scanning engine may gain access to personal data stored on that Client System and that this personal data may be recorded in the logs of the Scan. This access is entirely incidental and solely for the purposes of identifying that a vulnerability exists but may constitute "processing" for the purposes of Data Protection Legislation. Should any processing occur, the types of personal data processed and the categories of data subject to which that personal data relates will depend on the nature of the data accessed and could include any type of personal data and any category of data subject.
- 12.4 Where AppCheck does access any personal data in the course of Scanning a Client System, it will:
- 12.4.1 process that personal data only in accordance with the terms of this agreement and the Client's documented instructions (unless otherwise required by law in which case AppCheck will, where permitted, inform the Client of that legal requirement before processing);
 - 12.4.2 implement appropriate technical and organisational measures in respect of its processing of that personal data to ensure a level of security appropriate to the risk (in compliance with article 32 of the UK GDPR);
 - 12.4.3 ensure that any persons authorised to process the personal data on the Client's behalf are subject to a duty of confidence in respect of that processing; and
 - 12.4.4 other than as permitted by Chapter V of the UK GDPR, not transfer or allow the transfer of that personal data outside the United Kingdom without the Client's written consent.
- 12.5 AppCheck's access to personal data stored on a Client System will not constitute a personal data breach (as it is expressly authorised by the Client). In addition, whilst AppCheck^{NG} is designed to identify vulnerabilities which may be exploited by unauthorised third parties, it cannot identify whether any unauthorised third party access has in fact occurred. However:
- 12.5.1 where AppCheck reports a vulnerability which has enabled it to gain access to personal data, the Client should immediately review whether any personal data breaches may have occurred and take any steps required by Data Protection Legislation or which are otherwise desirable to address any personal data breach which it identifies; and

- 12.5.2 if AppCheck becomes aware of any personal data breach occurring in connection with its own processing of the personal data, it will notify the Client without undue delay and, where applicable, assist the Client to comply with its obligation to inform a regulatory authority and/or affected data subjects of the personal data breach.
- 12.6 Regular testing of the security of the Client System is an important aspect of compliance with Article 32 of the UK GDPR, and AppCheck^{NG} is intended to assist the Client in doing so. AppCheck recommends that the Client undertakes regular Scans and retains all records of Scans to ensure compliance with the accountability principle of the UK GDPR. However, the Client acknowledges that the use of AppCheck^{NG} is only one aspect of an appropriate security programme and that the Client remains ultimately responsible for its own compliance with Article 32 UK GDPR.
- 12.7 AppCheck acknowledges that the Client may from time-to-time receive requests from data subjects under the UK GDPR. To facilitate a response to a data subject request, the Client may access the logs through the AppCheck^{NG} service and/or request the deletion of any logs containing relevant personal data.
- 12.8 AppCheck believes that the provisions of clauses 12.5 to 12.7 provide sufficient assistance to the Client in its performance of its own obligations under the UK GDPR as required by Articles 28(3)(e) and (f). However, AppCheck will provide any additional assistance the Client may reasonably request at the Client's reasonable expense.
- 12.9 The Client authorises AppCheck to engage sub-processors from time to time provided that AppCheck will notify the Client of any intended changes concerning the addition or replacement of sub-processors and will impose upon any sub-processor (and ensure any sub-processor's compliance with) the terms of this clause 12 as if the processing being carried out by the sub-processor was being carried out by AppCheck (and AppCheck will be liable for the acts and omissions of its sub-processors as if they were AppCheck's own acts and omissions).
- 12.10 From time to time during the term of this agreement AppCheck will (upon written request from the Client):
- 12.10.1 provide details in writing of its data processing activities carried out on the Client's behalf; and
- 12.10.2 on reasonable notice allow the Client (or its appointed auditor) to audit its compliance with these terms, subject to any reasonable requirements or restrictions that AppCheck may impose to safeguard the personal data it holds on behalf of other clients and/or avoid unreasonable disruption to AppCheck's business.
- 12.11 AppCheck will process personal data on the Client's behalf only during the term of this agreement (and following termination to the extent required to perform any post termination obligations). On the termination or expiry of any part of the Services or this agreement as a whole, AppCheck will either delete or return all personal data processed on the Client's behalf in connection with the applicable Services, and delete any copies (except to the extent retention is required by law or for record-keeping purposes).

13. LIABILITY

- 13.1 The express terms set out in this document are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 13.2 Save as provided by clause 13.3 below:
- 13.2.1 AppCheck's total aggregate liability in respect of any and all causes of action arising out of or in connection with its indemnification obligations pursuant to clause 8.5 (third party IPR claims) shall not in any Contract Year exceed £5,000,000 (five million pounds);
- 13.2.2 in respect of any cause of action arising out of or in connection with this agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) which does not fall within the scope of clause 13.2.1, AppCheck's total aggregate liability shall not in any Contract Year exceed the total Fees paid or payable in respect of the preceding Contract Year (in respect of causes of action arising in the first Contract Year, the limit shall be the total Fees paid or payable in respect of the first Contract Year);
- 13.2.3 for the purposes of clauses 13.2.1 and 13.2.2, any causes of action arising after the date of termination of this agreement shall be deemed to have occurred immediately prior to the termination of the agreement;
- 13.2.4 AppCheck shall not be liable for any claim arising out of or in connection with this agreement to the extent that it relates to loss of profits, goodwill, business opportunity or anticipated savings, loss of data, loss of connectivity or access to a Client System (or any part of it) or any degradation of performance, injury to reputation, wasted management time or indirect, consequential or special loss or damage regardless of the form of action (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) and regardless of whether AppCheck knew or had reason to know of the possibility of the loss or damage in question; and
- 13.2.5 AppCheck shall not be liable for any delay in or failure to comply with its obligations to the extent that it results from the actions or omissions of the Client.
- 13.3 Nothing in this agreement shall limit or exclude AppCheck's liability for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation, and/or for any other loss or damage the exclusion or limitation of which is prohibited by English law.

14. FORCE MAJEURE

- 14.1 AppCheck shall not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations that is caused by events outside its reasonable control (a **Force Majeure Event**).
- 14.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond AppCheck's reasonable control and includes in particular (without limitation), terrorist attack or threat of terrorist attack, war, threat or preparation for war, fire, malicious damage, epidemic or pandemic, storm (including lightning strike), flood, or other natural disaster or adverse weather, industrial action or other shortage of available staff, impossibility of the use of telecommunications networks, or interruption or failure of utility service, malicious activity against AppCheck's computer systems such as computer virus or denial of service attack, other illegal or unlawful actions of third parties, acts or omissions of other clients and/or their users or non-performance by suppliers, subcontractors or agents and the acts, decrees, legislation, regulations, policy or restrictions of any government or public authority.

14.3 Where the Force Majeure Event affects AppCheck^{NG} the Client accepts that access to AppCheck^{NG} may be unavailable or restricted during the continuance of the Force Majeure Event. Where the Force Majeure Event affects any other Services, the Client's right to receive such Services is deemed to be suspended for the period that the Force Majeure Event continues, and AppCheck shall have an extension of time for performance for the duration of that period. AppCheck shall use its reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which its obligations may be performed despite the Force Majeure Event.

15. NOTICES

- 15.1 Each notice given under or in relation to this agreement must be sent by email to the recipient's nominated email address.
- 15.2 AppCheck's nominated email address is contracts@appcheck.com, and the Client's nominated email address for notices shall be as set out on the cover page. Each party may update its nominated contact details by notice to the other.
- 15.3 A notice shall be deemed to have been received at the time of sending if between 9am and 4:30pm on a Working Day, at 9am on that day if sent before 9am on a Working Day or otherwise at 9am on the next Working Day.
- 15.4 This clause 15 does not apply to the service of legal proceedings or other documents in any legal action.

16. GENERAL

- 16.1 These terms document the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, written or oral, relating to its subject matter. Each party acknowledges and accepts that, in entering into this agreement it has not relied upon any representation, undertaking or promise except as set out in these terms.
- 16.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms.
- 16.3 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this agreement does not constitute and shall not be construed as a waiver of such term or right, remedy, power or privilege and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 16.4 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this agreement shall not in any way affect the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 16.5 The Client may not assign, transfer, sub-contract or otherwise part with this agreement or any right or obligation under it without AppCheck's prior written consent.
- 16.6 Where used in this agreement, the words **include**, **includes**, **including** and **included** and like words and expressions will be construed without limitation unless inconsistent with the context, and any reference in this agreement to law or to any statute, statutory instrument, directive, regulation, order or other enactment shall mean the same as amended, enacted, replaced, extended, modified, consolidated or repealed from time to time.
- 16.7 AppCheck may amend these terms from time to time by notice to the Client. The revised terms shall take effect on such date as AppCheck may nominate, provided that such date must not be less than 30 days from the date of the notice save where the change is required by law to take place earlier.
- 16.8 Nothing in these terms shall confer any rights upon any person who is not a party to the agreement, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.9 This agreement (including any associated non-contractual disputes or claims) is governed by English law and the parties hereby accept the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with this agreement.