

END USER AGREEMENT

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, including the Computer Misuse Act 1990, the Investigatory Powers Act 2016 and Data Protection Legislation.
Contract Year	A 12 month period, the first Contract Year commencing on the start date of the Subscription 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.
END USER	The entity named in the end user acceptance form.
End User Branding	The End User's name, logo and any other trade mark or branding of the End User.
End User Content	Any content which is stored on an End User System or recorded in the logs of a Scan (other than content which was provided to the End User by AppCheck).
End User System	A system or network which the End User uses exclusively in connection with its own business requirements and which it has the right to Scan.
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.
Partner	The partner through which the End User has purchased the right to receive the Subscription and any related Professional Services and Third Party Services, whose details are on the cover page.
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 End User to get the full benefit from its Subscription (such as implementation, consultancy, development work or training), as ordered by the Partner.
Scan, Scanning, Scanned	A scan of the End User System(s) selected by the End User 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 End User, 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 ordered by the Partner for the End User, entitling the End User to access and use AppCheck ^{NG} in accordance with the terms of this agreement, which includes access to the Documentation, the hosting of the AppCheck ^{NG} service and the chosen Support package, as described in more detail in this agreement.
Support	The support which AppCheck provides to the End User in respect of its use of AppCheck ^{NG} , which may (depending on the package selected by the End User) include enhanced support and/or a managed service.
Third Party Service	Any service offered by a third-party service provider which the Partner may order for the End User through AppCheck.
User	An individual person who accesses AppCheck ^{NG} as part of the End User'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 End User and its Users to the non-exclusive right to access and use AppCheck^{NG} to Scan the End User 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 End User 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 will be as agreed with the Partner. Where the Partner has ordered a licence for the Internal Hub for the End User, 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 End User 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 End User must not duplicate the Internal Hub to enable it to be run on more End User 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 to it 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 End User 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 End User 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 end user, or which is unlawful, fraudulent or malicious, or has any unlawful, fraudulent or malicious purpose or effect.
- 1.7 The End User 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 End User 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 end user or any third party, including any potential damage to or impact on any third party network or service; or
 - 1.8.3 the End User is otherwise in breach of these terms.Promptly following such suspension AppCheck shall notify the End User of the suspension, the reason for the suspension and what steps the End User 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 End User on its own initiative using the AppCheck^{NG} service; or
 - 2.1.2 where the Partner has ordered a managed service for the End User, by an AppCheck consultant.
- 2.2 There is no limit on the total number of Scans that the End User 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, will be as agreed between the Partner and AppCheck.
- 2.3 For the purposes of all Applicable Law, the End User hereby expressly authorises AppCheck to access (or attempt to access) the End User System (and any programs or data held on the End User 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 End User System.
- 2.4 AppCheck^{NG} is a sophisticated vulnerability scanning tool which contains various safeguards to protect the End User System. Specifically, AppCheck warrants that:
 - 2.4.1 Scans will only be carried out in accordance with a request by the End User, and only on the date, at the time and on the application or IP nominated by the End User (or, where the Partner has ordered a managed service for the End User, 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 End User 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 End User 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 End User System and, particularly where the End User 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 End User only uses AppCheck^{NG} to Scan (or requests AppCheck consultants to Scan) applications or IPs which are on an End User System;
 - 2.6.2 where the End User System is provided by a third party hosting provider, the End User provides the hosting provider with advanced notice of the Scan and obtains its express written approval; and
 - 2.6.3 the End User 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 End User is not authorised to Scan.

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

- 2.7 In addition, AppCheck strongly advises the End User to:
 - 2.7.1 complete a full backup of all data which is contained in or available through any devices connected to the End User System prior to performing any Scan, and to ensure that such backup is stored remotely from the End User System;
 - 2.7.2 perform the Scan at a time when any adverse impact on the End User System is unlikely to cause a material impact to the End User'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 End User System that a Scan may cause.
- 2.8 Except for the safeguards set out in clause 2.4 (which AppCheck is responsible for), the End User 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 End User'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 an End User System causing loss or damage to any third party, such as a third party whose use of that End User System is disrupted by the Scan;
 - 2.8.3 an unauthorised third party gaining access to AppCheck^{NG} using the End User's access credentials and misusing AppCheck^{NG}; and/or
 - 2.8.4 the End User's use of AppCheck^{NG} or the proper performance of the Services by AppCheck resulting in the End User 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 End User's use of AppCheck^{NG} or AppCheck's proper performance of the Services then AppCheck will promptly notify the End User 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 End User with any reasonable cooperation which the End User requires to enable the End User to investigate the legal action and take steps to defend or settle the legal action (provided that any steps must be taken in the End User'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 End User 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 End User. 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 End User is solely responsible for securing and protecting its systems.

3. SUPPORT AND MANAGED SERVICE

- 3.1 AppCheck offers various Support packages for AppCheck^{NG}. AppCheck will provide the Support package selected by the Partner.
- 3.2 All Support packages include administrative Support access through the AppCheck helpdesk and access to the Documentation.
- 3.3 If the End User has any queries as to how to use AppCheck^{NG} it should in the first instance consult the Documentation. Should the End User 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 End User'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 End User 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 Partner has selected a Support package for the End User which includes a managed service, AppCheck will provide suitably skilled and experienced consultants to assist the End User 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 End User may choose to act on. However, the final decision as to which option (if any) to select rests solely with the End User.

4. PROFESSIONAL SERVICES

- 4.1 Any Professional Services ordered by the Partner for the End User 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 End User 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 Partner has ordered a Third Party Service for the End User, AppCheck will procure access to that Third Party Service on behalf of the End User.
- 5.2 The End User acknowledges that AppCheck is not the provider of any Third Party Service and therefore:
- 5.2.1 the End User's ability to use the Third Party Service will be conditional upon the End User 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 End User and the End User acknowledges that any rights or remedies in respect of the same must be pursued directly with the provider.
- 5.3 The End User 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 End User 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 End User 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 End User of its obligations under this clause 5.3.

6. USERS

- 6.1 Save as otherwise authorised in writing, the End User 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 End User's business purposes.
- 6.2 It is the End User'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 End User shall be fully responsible for any acts or omissions of any person accessing AppCheck^{NG} using its access credentials (whether or not with the End User's permission), as if such acts or omissions were the acts or omissions of the End User.
- 6.3 The End User 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 End User as soon as reasonably and commercially practicable following such report. In the event that the End User does experience issues with AppCheck^{NG} it shall report the problem using the procedure set out in the Documentation, and the End User 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 End User 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 End User 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 End User, belong to AppCheck, and nothing in these terms shall operate to transfer any such rights to the End User.

- 8.2 The End User 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 End User 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 End User shall be entitled to use such parts of AppCheck^{NG} in accordance with its Subscription.
- 8.4 The End User shall retain all rights in the End User Branding and End User Content. The End User grants AppCheck a non-exclusive royalty free licence to use such End User Branding and End User Content for the purposes of providing AppCheck^{NG} and the Services and, in the case of the End User Branding, in publicity material.
- 8.5 Subject to clause 8.6, AppCheck will indemnify, keep indemnified and hold the End User 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 End User 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 End User 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 End User'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 End User 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 End User acknowledges that the Partner is liable for any fees due in relation to the Subscription, the Professional Services and any Third Party Services and that the End User is not required to make any payment directly to AppCheck (though the End User may be required to make payments to the Partner under its agreement with the Partner).
- 9.2 The End User acknowledges that AppCheck's obligation to provide access to AppCheck^{NG}, any relevant Professional Services and any Third Party Services is conditional upon the Partner paying all amounts due to AppCheck as and when they fall due and that, if the Partner fails to do so, AppCheck be entitled to suspend such access and maintain such suspension until all outstanding sums due to AppCheck from the Partner have been paid.

10. TERM AND TERMINATION

- 10.1 The term of the Subscription, including any renewals, will be governed by the terms of AppCheck's agreement with the Partner.
- 10.2 Notwithstanding clause 10.1, AppCheck may terminate the Subscription immediately on written notice if the End User:
- 10.2.1 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; or
- 10.2.2 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}.
- 10.3 Unless otherwise expressly agreed to the contrary, all related Services shall automatically end if the Subscription expires or terminates for any reason.
- 10.4 AppCheck may also terminate a Third Party Service (without affecting the continuation of the Subscription or any other Services) if the provider of that Third Party Service:
- 10.4.1 ceases to trade or to offer that Third Party Service (either generally or through AppCheck specifically); or
- 10.4.2 requires AppCheck to terminate the End User's right to use that Third Party Service for any reason (for example due to the End User's misuse of that service).
- 10.5 In the event of termination of a Subscription for any reason:
- 10.5.1 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
- 10.5.2 the End User's (and all Users') access to AppCheck^{NG} shall be withdrawn by AppCheck and the End User shall not (and shall ensure that the Users do not) make any further attempt to access AppCheck^{NG}.
- 10.6 The termination of a Subscription 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 relationship), nor use such information for any purpose other than to exercise its rights and perform its obligations under these terms, 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 these terms 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, sub-contractors, professional advisors and consultants who have a need to know the same in connection with these terms, 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 an End User System containing personal data, it is possible that the Scanning engine may gain access to personal data stored on that End User 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 an End User System, it will:
- 12.4.1 process that personal data only in accordance with these terms and the End User's documented instructions (unless otherwise required by law in which case AppCheck will, where permitted, inform the End User 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 End User'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 End User's written consent.
- 12.5 AppCheck's access to personal data stored on an End User System will not constitute a personal data breach (as it is expressly authorised by the End User). 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 End User 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 End User without undue delay and, where applicable, assist the End User to comply with its obligation to inform a supervisory authority and/or affected data subjects of the personal data breach.
- 12.6 Regular testing of the security of the End User System is an important aspect of compliance with Article 32 of the UK GDPR, and AppCheck^{NG} is intended to assist the End User in doing so. AppCheck recommends that the End User undertakes regular Scans and retains all records of Scans to ensure compliance with the accountability principle of the UK GDPR. However, the End User acknowledges that the use of AppCheck^{NG} is only one aspect of an appropriate security programme and that the End User remains ultimately responsible for its own compliance with Article 32 UK GDPR.
- 12.7 AppCheck acknowledges that the End User may from time-to-time receive requests from data subjects under the UK GDPR. To facilitate a response to a data subject request, the End User may access the database records through the AppCheck^{NG} service and/or request the deletion of any database records containing relevant personal data.

- 12.8 AppCheck believes that the provisions of clauses 12.5 to 12.7 provide sufficient assistance to the End User 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 End User may reasonably request at the End User's reasonable expense.
- 12.9 The End User authorises AppCheck to engage sub-processors from time to time provided that AppCheck will notify the End User 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 the Subscription AppCheck will (upon written request from the End User):
- 12.10.1 provide details in writing of its data processing activities carried out on the End User's behalf; and
 - 12.10.2 on reasonable notice allow the End User (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 end users and/or avoid unreasonable disruption to AppCheck's business.
- 12.11 AppCheck will process personal data on the End User's behalf only during the term of the Subscription (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 the Subscription as a whole, AppCheck will either delete or return all personal data processed on the End User'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 the Subscription or Services or the performance of any of the obligations under these terms (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 by the Partner 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 by the Partner 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 the Subscription shall be deemed to have occurred immediately prior to the termination of the Subscription;
 - 13.2.4 AppCheck shall not be liable for any claim 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 an End User 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 End User.
- 13.3 Nothing in these terms limits or excludes AppCheck's liability for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation or for any other loss or damage which cannot be excluded or limited under 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 end users 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 End User 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 End User'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 these terms 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 End User's nominated email address for notices shall be as set out in the end user acceptance form. 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 placing or accepting an order, 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 these terms 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 these terms 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 End User may not assign, transfer, sub-contract or otherwise part with its Subscription or any right or obligation under these terms without AppCheck's prior written consent.
- 16.6 Where used in these terms, 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 these terms 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 posting the updated terms on its website. The revised terms shall take effect on the date that AppCheck posts the updated terms.
- 16.8 Nothing in these terms shall confer any rights upon any person other than AppCheck or the End User, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.9 These terms (including any associated non-contractual disputes or claims) are 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 these terms.