

# HR AGREEMENT - TERMS AND CONDITIONS

MG Care Executive Limited, trading as uCheck, (company number 07879166) whose registered office is at First Floor, Chiltern House, Matford Court, Sigford Road, Exeter, EX2 8NL ("uCheck").

## AGREED TERMS

### 1. INTERPRETATION AND DEFINITIONS

1.1. The definitions and rules of interpretation in this clause apply in this agreement.

<b>Applicable Laws</b>	applicable United Kingdom law, statute and regulation having the force and effect of law.
<b>Applicant</b>	the individual who's details are provided to enable a check.
<b>Applicant Data</b>	the data inputted by or on behalf of the Customer, Authorised Users, Applicant or uCheck on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services and any data obtained from the Applicant in relation to the Authorised Users.
<b>Authorised Users</b>	the Customer and if the Customer is a company those individuals, including any employees, prospective employees, applicants, agents and independent contractors of the Customer, who are authorised by the Customer to use the Services.
<b>Code of Practice</b>	means either:  (a) Revised Code of Practice for Disclosure and Barring Service Registered Persons November 2015; or  (b) Code of Practice for Disclosure Scotland In connection with the use of disclosure information and with the functions of registered persons 28 February 2011 Edition,  as amended from time to time.
<b>Commencement Date</b>	means the date on which the Customer is given access to the Services by uCheck.
<b>Confidential Information</b>	all confidential information (however recorded or preserved) disclosed by a party to the other party, concerning all information that would be regarded as confidential by a reasonable business person relating to the business, finances, transactions, trade secrets, customers, suppliers, intentions, processes, know-how, databases and software of the disclosing party including any

information or analysis derived from the Confidential Information but shall exclude, information:

(a) generally available to the public (other than as a result of breach of confidentiality obligations);

(b) available or which comes available to the receiving party on a non-confidential basis before disclosure; or

(c) independently developed without access to such Confidential Information.

<b>Customer</b>	the person or firm who purchases Services from uCheck.
<b>Customer Materials</b>	all materials, information, data, documents and any other media and assistance provided by the Customer to uCheck from time to time.
<b>Fees</b>	the fees payable by the Customer to uCheck for the Services, as set out in Schedule 1.
<b>Optional Services</b>	any additional services provided by uCheck through the HR system.
<b>Permitted Purpose</b>	the purpose of Authorised Users accessing the Services in accordance with terms of this Agreement.
<b>Public Network</b>	a public communications network (which may be established and operated by a telecommunications provider), including the internet, wireless and mobile technologies.
<b>Primary Contact</b>	the individual designated by the Customer from time to time (in writing) to liaise with the Supplier in respect of this agreement and/or the Services.
<b>Results</b>	the results made available to the Customer or the Authorised User.
<b>Retainer</b>	an advance payment the value of which shall be agreed in writing between uCheck and the Customer.
<b>Right to Work</b>	a legal duty to ensure all Applicants are eligible to work in the UK.

<b>Services</b>	means the services to be provided by the Supplier pursuant to the terms of this Agreement including DVLA, Right to Work (RTW), Disclosure and Barring Service (DBS), Disclosure Scotland (DS), Identity (ID), and Adverse Credit (ACH), and together with any other services which the Supplier may offer to the Customer from time to time.
<b>Service Levels</b>	the service levels to which the Services are to be provided as set out in Schedule 3.
<b>Software</b>	the online software solution provided by uCheck as part of the Services.
<b>Support Policy</b>	uCheck's policy for providing support in relation to the Services as made available uCheck website from time to time.
<b>Term</b>	the term of the agreement as defined in clause 2.1.
<b>Working Day</b>	a day (other than a Saturday or Sunday or bank holiday in England, Scotland or Wales). <b>Working Hours</b> Monday to Friday inclusive (excluding Bank and Public holidays in England) between the hours of 8.30 am - 5.30pm in relation to help desk services.

- 1.2. Unless the context otherwise expressly requires:
  - 1.2.1. references to "**including**" or "**includes**" shall be deemed to have the words "without limitation" inserted after them;
  - 1.2.2. writing or written includes e-mail; and
  - 1.2.3. reference to a clause, Annex or Appendix is a reference to a clause of, or Annex or Appendix to, this agreement.
- 1.3. Clause, Schedule and Appendix headings do not affect the interpretation of this agreement.
- 1.4. In the case of conflict or ambiguity between the provisions of this agreement, the conflict or ambiguity shall be resolved in accordance with the following order of precedence:
  - 1.4.1. Schedule 1 (Fees);
  - 1.4.2. terms and conditions set out in Part 2 (Agreed Terms); and
  - 1.4.3. any applicable Appendices.
- 1.5. The Customer acknowledges and accepts that these terms and conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice, or course of dealing.

## **2. COMMENCEMENT AND DURATION**

- 2.1. This agreement shall commence on the date the Customer accesses the HR Platform and continue unless terminated in accordance with clause 14 Termination.

## **3. LICENCE TO USE**

- 3.1. In consideration of the Fees, uCheck hereby grants to the Customer a non - exclusive, revocable, licence to permit the Authorised Users to use the Services and the Results during the Term solely for Permitted Purpose.

- 3.2. The Customer may not nor permit others to:

3.2.1. use, copy, modify or access the Services (including any related documentation) or any copy, in whole or in part, including any print-out of all or part of any database, except as expressly provided for in this agreement;

3.2.2. translate, reverse engineer, decompile, disassemble, unbundle, modify or create derivative works based on the Software, except as expressly permitted by law or the terms of this agreement; or

3.2.3. vary, delete or obscure any notices of proprietary rights or any product identification or restrictions on or in the Software.

- 3.3. The Customer undertakes to:

3.3.1. procure that each Authorised User keep a secure password for the Authorised User's use of the Services, that such password shall be changed on a regular basis and that each Authorised User shall keep this password confidential;

3.3.2. maintain a written, up to date list of current Authorised Users and provide such list to uCheck immediately upon uCheck's written request;

3.3.3. permit uCheck to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at uCheck's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; uCheck to audit the Services in order to establish the name and password of each Authorised User.

3.3.4. register each additional subsidiary or location with uCheck and where applicable pay the associated fee to uCheck as specified in Schedule 1 Fees of this Agreement;

3.3.5. prior to initiating checks through the DBS or DS have a written policy on the secure

handling of information provided by the DBS and/or DS, electronically or otherwise, in accordance with the requirements within these organisations respective Code of Practice. The Customer shall provide a copy of such a policy to uCheck upon request;

- 3.3.6. obtain clarification and agreement from an Applicant in relation to any inaccurate or incomplete submissions, prior to making any changes to such data you shall have sought their clarification and agreement to any changes; and
  - 3.3.7. ensure that the relevant proof of identity documents provided by the applicant or employee are properly cross referenced from face to face contact with the individual to establish their identity in accordance with any relevant guidelines associated with a particular check.
- 3.4. The integrity of the Software is protected by technical protection measures so that the Intellectual Property rights in the Software are not misappropriated. The Customer must not attempt in any way to remove or circumvent such technical protection measures, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in its possession for private or commercial purposes, any means whose sole purpose is to facilitate the unauthorised removal or circumvention of such technical protection measures.
- 3.5. The Primary Contact may increase the number of Authorised Users during the Term without uCheck's prior written consent. The Customer acknowledges that it shall be bound by any increase in the Authorised Users made by the Primary Contact and agrees to pay any additional Fees.
- 3.6. The Customer shall not, without the Supplier's prior written consent:
- 3.6.1. access all or any part of the Services and Results in order to build a product or service which competes with the Services and/or the Results; or
  - 3.6.2. use the Services and/or to provide services to third parties; or
  - 3.6.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Results available to any third party except the Authorised Users, or
  - 3.6.4. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Results, other than as provided under this clause.
- 3.7. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Results and, in the event of any such unauthorised access or use, promptly notify uCheck.

## 4. SCOPE OF SERVICES

- 4.1. uCheck shall, during the Term, provide to the Customer for use by the Authorised Users in accordance with the Permitted Purpose the:
  - 4.1.1. Services; and
  - 4.1.2. Optional Services (if any),
- 4.2. The Optional Services must only be used in conjunction with the Services.
- 4.3. Provided that such changes do not adversely affect the Services, uCheck shall be entitled to make changes to the Services from time to time. In addition to its rights in the previous sentence, uCheck shall be entitled to make changes to the Services from time to time (whether such change adversely affects the Services or not) for the purpose of:
  - 4.3.1. maintaining the security and/or performance and/or availability of the Services;
  - 4.3.2. complying with changes to Applicable Laws; or
  - 4.3.3. complying with the requirements of key suppliers.
- 4.4. The Customer shall only use the Services for its own internal business purposes.
- 4.5. uCheck shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
  - 4.5.1. uCheck will endeavour to ensure planned maintenance is carried out during the maintenance window of 7.00pm to 6.00 am UK time; and
  - 4.5.2. unscheduled maintenance performed outside Working Hours, provided that uCheck has used reasonable endeavours to give the Customer at least 2 Working Hours' notice in advance.
- 4.6. uCheck will provide the Customer with uCheck's standard customer support services during Working Hours in accordance with uCheck's Support Policy in effect at the time that the Services are provided. uCheck may amend the Support Policy in its sole and absolute discretion from time to time.
- 4.7. Nothing in this Agreement shall prevent uCheck from withdrawing all or part of the Services at any time during the term of this agreement upon such written notice to the customer as uCheck acting reasonably considers appropriate.

## 5. APPLICANT DATA

- 5.1. The Applicant shall own all right, title and interest in and to all of the Applicant Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Applicant Data.
- 5.2. uCheck shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Applicant Data. From time to time, as such document may be amended from time to time by uCheck in its sole discretion.
- 5.3. Notwithstanding the foregoing uCheck shall comply with the DVLA Privacy Policy when providing the DVLA Services.
- 5.4. uCheck is not providing any opinion in relation to, nor is it warranting the accuracy of, the Applicant Data. The Customer is responsible for decisions taken in relation to or as a result of the Applicant Data.
- 5.5. For the purpose of this clause “Data Processor”, “Data Subject”, “Data Controller”, “Process” and “Personal Data” shall have the meaning set out in the Data Protection Act 1998.
- 5.6. With respect to the parties' rights and obligations under this agreement, the parties agree that in respect of all Customer Data and Applicant Data, the Customer is the Data Controller, uCheck is the Data Processor and the Applicant is the Data Subject.
- 5.7. Where uCheck is processing Personal Data as a Data Processor, uCheck shall:
  - 5.7.1 Process the Personal Data in accordance with instructions from the Customer and/or to perform its obligations under this agreement;
  - 5.7.2 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage;
  - 5.7.3 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services; and
  - 5.7.4 take all reasonable steps to ensure the reliability and integrity of any uCheck personnel who have access to Personal Data.
- 5.8. The Customer acknowledges that uCheck cannot process certain Personal Data outside of the UK. To the extent that the Results contain any Personal Data the Customer shall not transfer any such Personal Data outside of the European Economic Area (EEA).
- 5.9. The Customer acknowledges that uCheck is reliant on the Customer for direction as to the extent to which uCheck is entitled to Process any Personal Data (for the avoidance of doubt

this includes, obtaining all necessary consents for the transfer of such Personal Data to uCheck, ensuring appropriate privacy notices are in place and ensuring that Personal Data is Processed accordingly). Consequently, uCheck will not be liable for any claim brought by a Data Subject or a relevant regulatory authority and the Customer shall indemnify and keep indemnified uCheck against all claims, losses, penalties, fines, costs, expenses and/or damages (in each case whether direct, indirect, consequential or special) arising out of or in connection with any such claim to the extent that the claim arises as a result of Customer's failure to comply with any applicable data protection laws (including, but not limited to the Data Protection Act 1998 and/or the Data Protection Act 2003).

- 5.10. uCheck shall take reasonable steps to preserve the integrity of the Applicant Data and to prevent the corruption or loss of Applicant Data. Notwithstanding the previous sentence, the Customer is responsible for maintaining all necessary back-ups and copies of the Applicant Data to the extent it is under the Customer's control or possession.
- 5.11. If the Applicant Data is corrupted or lost as a result of uCheck's breach of this agreement, the Customer may:
  - 5.12. request that uCheck restores (or procures the restoration of) Applicant Data and uCheck shall comply with such a request to the extent reasonably possible; and/or
  - 5.13. itself restore (or procure the restoration of) Applicant Data and uCheck shall repay any reasonable expenses incurred in doing so.
- 5.14. The Customer shall be responsible for ensuring that all Customer Data provided to uCheck is accurate and complete and, to the extent that the Customer Data comprises Personal Data, the Customer shall inform uCheck of any changes to such Personal Data.
- 5.15. The Customer shall be responsible for keeping uCheck informed of Applicant employment status information.

## **6. THIRD PARTY PROVIDERS**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. uCheck makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not uCheck. uCheck recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. uCheck does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.



## **7. SUPPLIER'S OBLIGATIONS**

7.1. uCheck undertakes that the Services will be supplied:

7.1.1. with reasonable skill and care; and

7.1.2. to meet or exceed the Service Levels at all times from the Commencement Date.

7.2. The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to uCheck's instructions, or modification or alteration of the Services by any party other than uCheck or uCheck's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, uCheck:

7.2.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Results and/or any other information obtained by the Customer through the Services will meet the Customer's requirements; and

7.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Results may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3. This agreement shall not prevent uCheck from entering into similar agreements with third parties, or from independently developing, using, selling or licensing results, products and/or services which are similar to those provided under this agreement.

7.4. uCheck warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

7.5. If the Customer becomes subject to a regulatory investigation, including an investigation by the Home Office or Border Agency, uCheck shall use all reasonable endeavours to provide a copy of the relevant data stored on its systems however nothing in this Agreement shall permit any regulatory body to access uCheck's premises or the premises of its subcontractors.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

- 8.1.1. provide uCheck with:
    - 8.1.1.1. all necessary co-operation in relation to this agreement;and
    - 8.1.1.2. all necessary access to such information as may be required by uCheck;

in order to provide the Services, including but not limited to Applicant Data, security access information and configuration services;
  - 8.1.2. comply with all Applicable Laws and regulations with respect to its activities under this agreement;
  - 8.1.3. carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, uCheck may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 8.1.4. ensure that the Authorised Users use the Services and the Results in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
  - 8.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for uCheck, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
  - 8.1.6. ensure that its network, security and systems comply with the relevant specifications provided by uCheck from time to time; and
  - 8.1.7. be solely responsible for procuring and maintaining its network connections and telecommunications links to uCheck's systems, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 8.2. The Customer shall be responsible for ensuring that it complies with its statutory obligations in respect of any right to work checks and the Right to Work Services shall not relieve that Customer from any obligations in respect of such right to work checks.
- 8.3. The Customer acknowledges that it is responsible for performing a right to work check for all employees and the Services provided by uCheck are complementary to that obligation. Nothing in this Agreement shall transfer any statutory obligations or liability to uCheck in relation to right to work checks.

- 8.4. The Customer shall be solely responsible for ensuring that applications are eligible for processing within 3 months of applicant creation and submission for processing.
- 8.5. The Customer shall be solely responsible for ensuring the accuracy of all documents seen in support of the application including any expiry dates or other key information within any documentation.
- 8.6. The Customer shall be responsible for ensuring the system data is kept up to date in line with the Data Protection Act 1998 and 2003.
- 8.7. uCheck will delete all applicant data in line with Applicable Laws.
- 8.8. The Customer shall allow the Supplier and any auditors or other advisers to uCheck, in order to conduct audits in accordance with the provisions of Schedule 2

## 9. FEES AND PAYMENT

- 9.1. The Customer shall pay the Fees to uCheck for the Services in accordance with this clause 9 and Schedule 1 (Fees).
- 9.2. uCheck reserves the right to request a Retainer which, if requested, shall be paid by the Customer prior to the Services commencing.
- 9.3. uCheck reserves the right to settle any unpaid invoices from the Retainer held on your behalf.
- 9.4. Any Retainer received by uCheck will be held in a general client account, the Customer is unlikely to receive as much interest as they might have obtained had they held and invested the money themselves. The Retainer shall be held by uCheck and returned to the Customer, along with any interest, within 30 days of termination or expiry of this Agreement.
- 9.5. The Customer shall pay the Fees via debit card, credit card, direct debit **or standing order**. In the case of payment by direct debit or standing order, the Customer shall **[on the Commencement Date]** provide uCheck with valid, up to date and complete information in order to permit uCheck to set up a direct debit or **standing order** and/or any other relevant valid, up to date and complete contact and billing details as may be necessary for collection of the Fees from the Customer's nominated bank account. The Customer authorises uCheck to collect such Fees as may be due to it pursuant to this clause 9 (and Schedule 1).
- 9.6. uCheck reserves the right to credit check direct debit Customers upon commencement of the Services.
- 9.7. uCheck shall issue invoices to the Customer in respect of Fees due (calculated in accordance with Schedule 1) on the 1st and 15th day of each month.

- 9.8. The Customer shall pay each invoice submitted by uCheck:
- 9.8.1 within 10 days of the date of the invoice ("**Due Date**"); and
  - 9.8.2 in full and in cleared funds to a bank account nominated in writing by the Customer.
- Time for payment of uCheck's invoices shall be of the essence.
- 9.9. If uCheck has not received payment by the Due Date, and without prejudice to any other rights and remedies of uCheck:
- 9.9.1 uCheck reserves the right to engage a debt recovery agent (to recover payment of the debt due) should the customer fail to pay sums due to uCheck;
  - 9.9.2 uCheck may, without liability to the Customer, disable the Customer's and all Authorised Users password, account and access to all or part of the Services and uCheck shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 9.9.3 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank plc, commencing on the Due Date and continuing until fully paid, whether before or after judgment.
- 9.10. All amounts and fees stated or referred to in this agreement:
- 9.10.1 shall be payable in pounds sterling;
  - 9.10.2 are, subject to clause 13.4, non-cancellable and non-refundable; and
  - 9.10.3 are exclusive of value added tax, which shall be added to uCheck's invoice(s) at the appropriate rate. In line with VAT legislation, all Services purchased on behalf of a Customer, including but not limited to the Disclosure & Barring Service and Disclosure Scotland charges collected on behalf of the aforementioned organisations, will be treated as disbursements for VAT purposes, and will therefore not be subject to VAT.
- 9.11. The Customer will be entitled to a referral fee for the referral or introduction of a Customer or potential Customer.

## **10. PROPRIETARY RIGHTS**

- 10.1. The Customer acknowledges and agrees that uCheck and/or its licensors own all intellectual property rights in the Services and the Results. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Results.

- 10.2. uCheck confirms that it has all the rights in relation to the Services and the Results that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 10.3. The Customer shall promptly report to uCheck any infringement of uCheck intellectual property rights that comes to its attention.
- 10.4. Save where expressly agreed in writing by the parties, the Customer acknowledges and accepts that nothing in this agreement shall prevent or restrict uCheck from exploiting and or licensing any of the uCheck intellectual property rights to any third party.
- 10.5. The Customer warrants that it shall (and procures that all Authorised Users shall):
  - 10.5.1. not attempt to copy, duplicate, modify, convert, create derivative works from or distribute all or any portion of the Services (except to the extent expressly set out in this agreement or allowed by any Applicable Law which is incapable of exclusion by agreement between the parties);
  - 10.5.2. not attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services (except allowed by any Applicable Law which is incapable of exclusion by agreement between the parties);
  - 10.5.3. not build a product or service which competes with the Services;
  - 10.5.4. only use the Services for its own organisational purposes; and
- 10.6. prevent any unauthorised access to, or use of, the Services.

## **11. CONFIDENTIALITY**

- 11.1. Any confidentiality obligations under this clause 11 are in addition to (and not a substitution for) all other confidentiality obligations agreed between the parties.
- 11.2. Each party undertakes that it shall not at any time, disclose to any person any Confidential Information, except as permitted by clause 11.3.
- 11.3. Each party may disclose the other party's Confidential Information:
  - 11.3.1. to its employees, officers, sub-contractors, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information shall comply with this clause 11 and all other provisions relevant to the confidential information under this agreement; and

- 11.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.4. No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this agreement.
- 11.5. Notwithstanding clause 11.4, the Customer acknowledges and accepts that uCheck shall be able to make public announcements about the relationship and this contract between the parties without the prior written consent of the Customer (including statements in the media, on its website or elsewhere).
- 11.6. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
  - 11.6.1. is or becomes publicly known other than through any act or omission of the receiving party;
  - 11.6.2. was in the other party's lawful possession before the disclosure;
  - 11.6.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 11.6.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 11.6.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.7. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.8. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.9. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.10. The Customer acknowledges that details of the Services constitute uCheck's Confidential Information.

- 11.11. uCheck acknowledges that the Applicant Data is the Confidential Information of the Applicant.
- 11.12. This clause 11 shall survive termination of this agreement, however arising.
- 11.13. Subject to clause 11.5, no party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## 12. INDEMNITY

- 12.1. uCheck shall defend the Customer, its officers, directors and employees against any claim that the Services infringe any patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality (to the extent any or all of the above are enforceable in England and Wales), and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims.
- 12.2. The Customer shall indemnify uCheck against all claims, losses or damages suffered by uCheck arising out of any claim made by a third party against uCheck for infringement of that third party's intellectual property rights arising out of uCheck's use of the Customer Materials.
- 12.3. If a third party makes a claim, or notifies an intention to make a claim, against either party ("**Indemnified Party**") which may reasonably be considered likely to give rise to a liability under clauses 12.1 or 12.2 ("**IPR Claim**"), the Indemnified Party shall:
  - 12.3.1. immediately notify the other party of the IPR Claim;
  - 12.3.2. provide the other party with such reasonable assistance, documents, records and information as requested;
  - 12.3.3. not make any admission of liability, agreement or compromise; and
  - 12.3.4. allow the other party to conduct all negotiations and proceedings.
- 12.4. Nothing in this clause shall restrict or limit the Indemnified Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this clause 12.

## 13. LIMITATION OF LIABILITY

- 13.1. This clause 13 sets out the entire financial liability of each party to the other in respect of:
  - 13.1.1. any breach of this agreement;

- 13.1.2. any representation statement or tortious act or omissions (including negligence) arising under or in connection with this agreement; and
  - 13.1.3. any other liability to the other party whatsoever.
- 13.2. Nothing in this agreement limits or excludes the liability of either party for:
- 13.2.1. death or personal injury resulting from negligence;
  - 13.2.2. any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party; or
  - 13.2.3. any other liability which is incapable of being excluded or limited by law.
- 13.3. Subject to clauses 12.1, 12.2 and 13.2, neither party shall have any liability to the other (howsoever arising, including any liability in tort) under or in connection with this agreement for any:
- 13.3.1. loss of profits or anticipated savings;
  - 13.3.2. loss of revenue;
  - 13.3.3. loss or damage to reputation or goodwill;
  - 13.3.4. loss of opportunity;
  - 13.3.5. wasted management or other staff time;
  - 13.3.6. Losses or liabilities under or in relation to any other agreement, and in each case whether direct, indirect, special and/or consequential loss or damage; or
  - 13.3.7. for any other indirect, special and/or consequential loss or damage.
- 13.4. Subject to clauses 12.1, 12.2 and 13.2, each party's total aggregate liability in respect of all other liabilities in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement (including all non- contractual liability) shall not exceed:
- 13.4.1. in respect of any one event (or series of connected events) exceed the total Fees paid by the Customer to uCheck in the immediately preceding 12 months; and
  - 13.4.2. in aggregate shall not exceed the total Fees payable by the Customer to uCheck



under this agreement.

13.5. The Customer acknowledges and accepts that:

- 13.5.1. the Services are subject to the limitations and issues inherent in the use of the Public Network (including denial of service attacks and telephony connections) and uCheck is not responsible for and shall not be liable to the Customer for breach of this agreement due to any problems or other damages resulting from such limitations or issues.
- 13.5.2. uCheck shall have no liability arising from any failure on the part of the Customer to comply with its obligations in relation to right to work checks including those obligations set out in the Data Protection Act 1998 and 2003.

## 14. TERMINATION

14.1. Without affecting any other right or remedy available to it, either party may terminate or suspend this agreement with immediate effect by giving written notice to the other party if:

- 14.1.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- 14.1.2. the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 14.1.3. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 14.1.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 14.1.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or

more other companies or the solvent reconstruction of that other party;

- 14.1.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 14.1.8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 14.1.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.1.10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 14.1.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.4 to clause 14.1.10 (inclusive); or
- 14.1.12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

14.2. On dissatisfaction of the Service the Customer can terminate this agreement for any reason:

- 14.2.1. all licences granted under this agreement shall immediately terminate;
- 14.2.2. each party, shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party, save that each party shall be permitted to keep one copy of any information, documents and/or materials disclosed it by the other party (which is to be retained in a confidential and secure file) in circumstances where the receiving party is required to do so according to mandatory law (but such information, documents and/or materials shall be subject to an indefinite confidentiality obligation according to the terms and conditions set out in this agreement);
- 14.2.3. uCheck may destroy or otherwise dispose of any of the Customer and Applicant Data in line with any Applicable Laws.
- 14.2.4. 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 the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## 15. GENERAL

- 15.1. **Capacity.** Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform the agreement and that those signing the agreement are duly authorised to bind the party for whom they sign.
- 15.2. **Assignment and other dealings.** The Customer shall not, except as expressly provided in the agreement, assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights and obligations under the agreement without the prior written consent of uCheck.
- 15.3. uCheck may assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights and obligations under the agreement without the prior written consent of the Customer.
- 15.4. The rights provided under this agreement are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 15.5. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 15.6. **Entire agreement.** Without prejudice to clause 11.1, the agreement constitutes the entire agreement and understanding of the parties in respect of its subject matter and supersedes all prior agreements, negotiations, discussions and any previous practice or course of dealing between the parties relating to the same. In particular but without limit to the generality of the preceding sentence, the Customer acknowledges and accepts that it has not entered into the agreement in reliance of any verbal or written communication with any representative of uCheck nor is it relying on any statement or comment made in any uCheck literature (including without limit its website). Nothing in this clause shall limit or exclude any liability for fraud.
- 15.7. **Variation.** No variation or addition to the agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 15.8. **Severance.** If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the agreement shall not be affected. If any invalid, unenforceable or illegal provision of the agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

- 15.9. **Third party rights.** A person who is not a party to the agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 15.10. **Force majeure.** Neither party shall in any circumstances be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from a Force Majeure Event.
- 15.11. **Notices.** Any notice or other communication required to be given under the agreement, shall be in writing and shall be delivered personally, or sent by prepaid first-class post or recorded delivery, by commercial courier or email to the other party required to receive the notice or communication to the address or email set out at the top of this agreement or as otherwise specified by the relevant party by notice in writing to each other party.
- 15.12. **Counterparts.** This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 15.13. No counterpart shall be effective until each party has executed at least one counterpart.
- 15.14. **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 15.15. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered on the date which the Customer is given access to the services by uCheck.

# SCHEDULE 1 - CHARGES AND FEES

## CHARGES

### **1 Standard Charges**

- 1.1 Set up Fee - £19.95 plus vat to include 2 users /accounts
- 1.2 Additional locations/subsidiaries - £10.00 plus vat each
- 1.3 Additional users - £5.00 plus vat each
- 1.4 White labelling - £500.00 plus vat
- 1.5 Direct Debit payments on a bi-monthly payment cycle or upfront payment using credit or debit cards. (NB Direct Debit processing fee 50p and 2% Credit Card or Debit cards transition fee).

### **2 Large Customer Charges (usage of 1000+ case per year)**

- 2.1 Set up Fee - £19.95 plus vat to include 2 users /accounts
- 2.2 Additional locations/subsidiaries –£10.00 plus vat each
- 2.3 Additional users - £5.00 plus vat
- 2.4 White labelling – £500.00 plus vat
- 2.5 Direct Debit payments on a bi-monthly payment cycle (as described below) or upfront payment using credit or debit cards. (NB Direct Debit processing fee 50p and 2% Credit Card or Debit cards transition fee).

## FEES

Our pricing structure and fees are displayed on our website <https://www.ucheck.co.uk/pricing/>

## 16. SCHEDULE 2 - AUDIT

1. The Customer shall allow uCheck and any auditors of or other advisers to uCheck to access any of the Customer's premises, personnel and relevant records as may be reasonably required in order to:
  - a. fulfil any legally enforceable request by any regulatory body; or
  - b. undertake verifications of the accuracy of the Charges or identify suspected fraud; or
  - c. undertake verification that all obligations of the Customer are being performed in accordance with this agreement; or
  - d. undertake verification of any elements of the Services as may be required by uCheck's licensors.
2. uCheck shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Customer or delay the provision of the Services to the Customer and that, where possible, individual audits are co-ordinated with each other to minimise any disruption. uCheck may agree to conduct desk top audit to ensure disruption is minimised.
3. Subject to uCheck's obligations of confidentiality, the Customer shall provide uCheck (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.
4. uCheck shall use reasonable endeavours to provide at least 5 Working Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
5. The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Schedule 2, unless the audit identifies a breach by the Customer, in which case the Customer shall reimburse uCheck for all its reasonable costs incurred in the course of the audit.
6. If an audit identifies that:
  - a. the Customer has failed to perform its obligations under this agreement, without prejudice to the other rights and remedies of uCheck, the Customer shall take the necessary steps to comply with its obligations at no additional cost to uCheck:

## **17. SCHEDULE 3 - SERVICE LEVELS**

1. uCheck will be available to receive customer calls between the hours of 8.30am and 5.30pm Monday to Friday on days uCheck is open for business.
2. uCheck will use reasonable endeavours to assist with any issues relating to the availability of the system and any queries concerning use of the system.
3. Response times to any issues will be within 2 working hours.