

## Subscription Agreement

This Subscription Agreement (**Agreement**) is between you (**You/Client**) and Member Check Pty Ltd ACN 129 012 344 (**MemberCheck**).

**PLEASE READ THIS AGREEMENT BEFORE ACCESSING OR USING THE MEMBERCHECK SERVICE.**

BY ISSUING A PURCHASE ORDER TO MEMBERCHECK OR CLICKING “I AGREE” (OR SIMILAR BUTTON OR CHECKBOX) OR BY ACCESSING OR USING THE MEMBERCHECK SERVICE, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT (INCLUDING ANY APPLICABLE ADDENDA IDENTIFIED IN YOUR PURCHASE ORDER OR THIS AGREEMENT), YOU MUST NOT ACCESS OR USE THE MEMBERCHECK SERVICE.

### 1 Agreement

- (a) This Agreement commences on the commencement date specified in Schedule 2 to the Purchase Order (**Commencement Date**) and continues for the period of 12 months, unless terminated earlier in accordance with this Agreement (**Initial Term**).
- (a) At the end of the Initial Term, this Agreement continues for successive periods of 12 months each unless terminated in accordance with this Agreement.
- (b) Either party may terminate this Agreement by giving the other party sixty (60) days’ notice in writing prior to the end of the Initial Term or at any time after the expiration of the Initial Term. If the Client terminates the Agreement under this clause, Fees paid in advance are not refundable.
- (b) MemberCheck may amend this Agreement from time to time and will publish those amendments on its Website and/or give notice of the amendments to the Client. The Client’s continued use of the MemberCheck Service after such amendments will constitute acceptance of the amendments by the Client.
- (c) If the Client and MemberCheck are parties to a subscription agreement for the MemberCheck Service at the Commencement Date (**Existing Agreement**) the Client and MemberCheck agree that this Agreement supersedes and replaces the Existing Agreement with effect from the Commencement Date.

## 2 Client's use of the MemberCheck Service

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- (a) MemberCheck grants to the Client a non-exclusive, non-transferable, revocable licence to access and use the MemberCheck Service only for the purposes, and subject to any restrictions, specified in this Agreement, including in any Addenda.
- (b) The Client must:
- (1) use the MemberCheck Service only for the purpose of:
    - (A) assisting in complying with legal duties and regulations which apply to the Client;
    - (B) performing a statutory role as a Governmental organisation;
    - (C) performing law enforcement duties; or
    - (D) assisting a third party entity in relation to the obligations set out in (A) to (C) above;
  - (2) safeguard (and not share) its user IDs and passwords and prevent any unauthorised access to and use of the MemberCheck Service and related systems or networks;
  - (3) inform MemberCheck immediately of any actual or potential unauthorised access to the Client's MemberCheck account, or to any part of the MemberCheck Service; and
  - (4) comply with all Federal, State, Territory and local laws and regulations applicable to the Client.
- (c) The Client must not:
- (1) reproduce, distribute, display, sell, publish, broadcast or circulate the MemberCheck Service or any information retrieved from the MemberCheck Service to any third party (other than a Permitted User or as required by law), nor make the MemberCheck Service available for any such use, unless authorised in writing by MemberCheck;
  - (2) use any device, software or routine to interfere or attempt to interfere with the proper working of the MemberCheck Service or any activity conducted through the Website or API or attempt to disable or circumvent any security mechanisms used by the MemberCheck Service;
  - (3) introduce any harmful code or malware into the MemberCheck Service or transmit any malicious code through the MemberCheck Service (such as a virus, Trojan Horse, worm, logic bomb, or other software routine or hardware component designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data, or to perform any such actions);
  - (4) use the MemberCheck Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; or
  - (5) take any action which imposes an unreasonable or disproportionately large load on the MemberCheck infrastructure or otherwise interferes with or disrupt the integrity or performance of the MemberCheck Service or any of the servers or networks that are connected to the MemberCheck Service or data contained in the MemberCheck Service (for example, via unauthorized benchmark testing or penetration testing); and

- (d) and must not permit any other person (including a Permitted User) to adapt, reverse engineer or assemble, decompile, disassemble, alter, modify or make corrections to or make derivative works from the whole or any part of the MemberCheck Service or data derived from the MemberCheck Service or documentation provided as part of the MemberCheck Service or demonstrate, translate, or otherwise attempt to discover the source code of the MemberCheck Service or any part of it. MemberCheck may reference the Client as a user of the MemberCheck Service.
- (e) The Client acknowledges and agrees that where access to and use of the MemberCheck Service (or information retrieved from the MemberCheck Service) is by a Permitted User, access and use must be in accordance with this Agreement. Client is liable for the access to and use of the MemberCheck Service (and information retrieved from the MemberCheck Service) by Permitted Users (and or any other third party).
- (f) The Client must deactivate a Permitted User's access to the MemberCheck Service immediately the Permitted User is no longer authorised to access or use the MemberCheck Service on behalf of the Client.
- (g) The Client understands that support enquiries are to be initiated via email, and that MemberCheck intends to reply to such enquiries within 48 Business Hours.
- (h) Where the Client is an authorised reseller of the MemberCheck Service, the licence granted to the Client under clause 2(a) permits the Client to provide access to the MemberCheck Service to end user customers provided that the reseller passes through to its customers the requirements of this Agreement (and any applicable Addenda) including the restrictions, limitations and exclusions applicable to Clients and Permitted Users.
- (i) The MemberCheck Service comprises data services supplied to MemberCheck from third parties (**Third Party Suppliers**) which are subject to specific terms and conditions required by Third Party Suppliers as set out in Addenda to this Agreement.
- (j) If for any reason MemberCheck's agreement with a Third Party Supplier is terminated and MemberCheck is no longer able to provide a data service to the Client, MemberCheck will notify the Client and:
  - (1) consult with the Client on the alternative data services existing within the MemberCheck Service and where applicable, any change to the Fees payable; and/or
  - (2) where either no alternative options exist within the MemberCheck Service or alternative options are not acceptable to the Client (acting reasonably), MemberCheck will use reasonable commercial endeavours to provide an alternative data service within thirty (30) days.
- (k) If the Client (acting reasonably) is not satisfied with the alternative options available for a data service following a notice under clause 2(j) or MemberCheck otherwise deems it necessary, MemberCheck may terminate the applicable Addendum and the Client's access to the relevant data service and MemberCheck:
  - (1) will refund to the Client any portion of unused prepaid fees applicable to that data service; and
  - (2) MemberCheck will not otherwise be liable to the Client for a failure to make the data service available to the Client.

### 3 Fees

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- (a) The Client must pay to MemberCheck the fees specified in Schedule 2 to the Purchase Order or as advised to the Client in writing (**Fees**).
- (b) MemberCheck may increase the Fees once a year, after the Initial Term, by an amount no greater than 5% of the then-current annual licence fee, plus the increase in Australian CPI each year, without written notice. This limitation does not apply to unexpected circumstances where MemberCheck's costs of acquiring data are significantly increased, in which case MemberCheck will provide the Client with a 30-days' written notice.
- (c) The Client must pay the Fees invoiced by MemberCheck by the due date specified on each invoice (standard term 30 days unless otherwise agreed by MemberCheck in writing)
- (d) Any bank or wire transfer fees applicable to the Fees must be paid:
  - (1) by the Client, if charged by the Client's bank or its intermediaries; or
  - (2) by MemberCheck if charged by MemberCheck's bank.
- (e) Payment for invoices that are past their due date will attract an administrative charge, equivalent to USD50 per invoice, plus interest at a rate of two (2%) percent on any outstanding amount, for every thirty (30) calendar days the invoice remains outstanding. MemberCheck reserves the right to suspend access to or use of the MemberCheck Service until payments are made in full. The Client is solely responsible for all collection or legal fees incurred by MemberCheck, due to lateness or default in payment. If the Client does not approve an invoice, the Client must notify MemberCheck in writing of any dispute in amounts invoiced within five (5) Business Days of receipt of an invoice.

### 4 Taxes

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Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities in connection with this Agreement. Fees are payable in full without deduction. The Client is responsible for paying any taxes, levies, or duties applicable to the Agreement or its use of the MemberCheck Service in addition to the Fees.

### 5 Privacy

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- (a) Each party agrees to comply with all privacy and other data protection laws which apply to it and the reasonable directions of the other party in relation to personal information supplied by that party.
- (b) If after the Commencement Date, the EU GDPR or UK GDPR is applicable to the Client and the processing of personal data using the MemberCheck Service, the Client must notify MemberCheck and to the extent MemberCheck processes personal data subject to the EU GDPR or UK GDPR on behalf of the Client, the Client acknowledges and agrees that the terms and conditions of the MemberCheck Data Processing Agreement in Addendum C applies to the processing of that personal data.

### 6 Intellectual Property Rights

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- (a) The intellectual property rights in all software, content, and functionality of the MemberCheck Service and all data and information supplied through the MemberCheck Service are owned by MemberCheck or another third party (**MemberCheck IP**).

MemberCheck grants to the Client a non-exclusive, revocable licence to use the MemberCheck IP solely for the purpose of, and in accordance with, this Agreement.

- (b) The Client retains all intellectual property rights in all information and other materials the Client supplies to MemberCheck under this Agreement. The Client grants to MemberCheck a non-exclusive licence to use such information and materials for the purpose of the provision of the MemberCheck Service to the Client.

## 7 Client Warranties

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The Client warrants and undertakes that:

- (a) this Agreement creates legally binding obligations of the Client; and
- (b) it is bound by and agrees to comply with the terms of each Addendum to the extent that the Addendum is applicable to the Client as identified in Schedule 1 of the Purchase Order or elsewhere in this Agreement;
- (c) it has satisfied itself, as to the adequacy, appropriateness, and compatibility of the MemberCheck Service for its requirements; and
- (d) in entering into this Agreement, the Client does not rely on any statements or representations not set out in this Agreement whether as to the adequacy of the MemberCheck Service or the reliability or independence of any electronic data service or any other matters, made verbally or otherwise.

## 8 Warranties

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- (a) MemberCheck warrants that it is entitled to enter into this Agreement and perform its obligations under this Agreement.
- (b) The Client may have rights under statutory consumer protection laws in its jurisdiction (including the Australian *Competition and Consumer Act 2010* (Cth)), which cannot be excluded, restricted, limited or modified. The exclusions of warranties below and elsewhere in this Agreement, and the limitation of liability in clause 9 below, apply subject to any non-excludable rights the Client may have under such laws.
- (c) Subject to clause 8(b), all representations, warranties, conditions, terms, guarantees and other provisions implied or imposed by or under statute, common law or otherwise including, without limitation, warranties, guarantees or other terms as to suitability, merchantability, satisfactory or acceptable quality and fitness for a particular purpose, are excluded to the maximum extent permitted by law.
- (d) Unless expressly provided, the MemberCheck Service is delivered “as is” without warranty of any kind. MemberCheck does not warrant or represent that the MemberCheck Service (or information or material supplied to MemberCheck on which all or part of the MemberCheck Service depends) will be delivered free of any inaccuracies, interruptions, delays, omissions or errors (**Faults**), or that any Faults will be corrected. MemberCheck is not liable to the Client for any loss, damages or costs resulting from any Faults. The Client assumes sole responsibility and entire risk as to the suitability and results obtained from use of the MemberCheck Service, and any decisions made or actions taken based on the information contained in or generated by the MemberCheck Service.
- (e) If the Client is in New Zealand, the parties agree that any goods or services supplied or acquired under this Agreement are supplied or acquired in trade as defined in the

*Consumer Guarantees Act 1993 (NZ) (CGA)*. The parties agree that the CGA will not apply to this Agreement and it is fair and reasonable that the parties are bound by this provision. The Client agrees that any provisions of the CGA that apply to a non-contracting supplier of services are excluded to the extent permitted by the CGA.

- (f) The Client acknowledges that it is acquiring the MemberCheck Service relying solely on the Client's skill and judgement and not on MemberCheck's representations or other conduct, except as expressly provided by MemberCheck in this Agreement. The purpose of this clause is to, among other things, expressly contract out of the Fair Trading Act 1986 (NZ) to the maximum extent possible and the parties agree that it is fair and reasonable to do so.
- (g) The Client acknowledges that MemberCheck is an aggregator and provider of information for general information purposes only and does not provide financial, tax, accounting or legal advice. MemberCheck is also not responsible for any loss, damages or costs resulting from any decisions of the Client, or anybody accessing the MemberCheck Service through the Client, that are made in reliance on the MemberCheck Service, including decisions relating to legal, compliance and/or risk management decisions. The Client agrees that it uses the MemberCheck Service at its own risk.

## 9 Limitation of liability

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- (a) If any term, condition, warranty, guarantee or other provision is implied or imposed in relation to this Agreement or applies to any goods or services provided under this Agreement (whether by legislation, common law or otherwise) and it cannot be excluded (a **Non-Excludable Term**), but MemberCheck is able to limit its liability for a breach of such Non-Excludable Term, then MemberCheck's liability for a breach of the Non-Excludable Term is limited to one or more of the following at MemberCheck's option, the supplying of the goods or services again or the payment of the cost of having the goods or services supplied again.

- (b) Subject to paragraph (a) above, MemberCheck's liability, whether arising in contract, tort (including negligence), statute or otherwise under or in connection with the MemberCheck Service or this Agreement:
  - (1) is limited to an amount equal to 50% of the total Fees paid by the Client for the annual subscription in the 12 months preceding such claim; and
  - (2) is excluded in respect of all Excluded Loss.
- (c) Subject to clause 10 and applicable Addenda, the Client's liability whether arising in contract, tort (including negligence), statute or otherwise under or in connection with the MemberCheck Service or this Agreement is excluded in respect of all Excluded Loss.
- (d) Nothing in this Agreement limits liability that cannot be limited under law (including, Non-Excludable Terms).

## 10 Indemnity

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- (a) The Client agrees to indemnify MemberCheck and its related entities, representatives, partners, directors, agents and employees from and against any and all liabilities, claims, costs, losses, damages and expenses, including legal fees on a full indemnity basis, suffered or incurred by MemberCheck, its related entities, representatives, partners, directors, agents and employees as a result of:
  - (1) the use of the MemberCheck Service for a purpose or in a manner other than as permitted by this Agreement (including the applicable Addenda) or a breach of this Agreement (or an applicable Addenda);
  - (2) a failure of the Client to give a notice to MemberCheck when required by clause 5(b);
  - (3) any negligent, unlawful or wilful act or omission of the Client or its Permitted Users, related entities, representative, partners, directors, agents or employees; or
  - (4) any claim by a third party (including a Permitted User) arising out of or in connection with the use of the MemberCheck Service by the Client or Permitted Users.

## 11 Termination

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- (a) Either party (**first party**) may terminate this Agreement immediately by written notice to the other party if:
  - (1) the other party breaches this Agreement and, where the breach is able to be remedied, fails to remedy the breach within 14 days of notice from the first party specifying the breach; or
  - (2) an Insolvency Event occurs in relation to the other party.
- (b) If MemberCheck has a right to terminate this Agreement due to a breach by, or Insolvency Event in relation to the Client, MemberCheck may terminate or suspend part or all of the MemberCheck Service or this Agreement.
- (c) If this Agreement expires or is terminated for any reason, the Client must, subject to clause 11(d):

- (1) remove and delete all Client data, including current and historical scans, from the MemberCheck Service, and cease using the MemberCheck Service by the effective date of expiration or termination;
  - (2) pay to MemberCheck all Fees and any other amounts due to MemberCheck up to the effective date of expiration or termination; and
  - (3) return to MemberCheck, or at MemberCheck's direction, destroy, all copies of all information, content and other materials obtained by the Client from the MemberCheck Service, as soon as reasonably practicable but no later than 60 days from termination, except to the extent the Client is required by law to retain any such information, content or other materials.
- (d) Notwithstanding termination of this Agreement, Client may retain information extracted and downloaded from the MemberCheck Service prior to termination to the extent such information is required for audit and regulatory compliance purposes.

## 12 Confidentiality

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- (a) Each party must keep confidential and not use or disclose any Confidential Information of the other party, except as permitted by this Agreement.
- (b) The obligation of confidence in clause 12(a) extends to Confidential Information provided to or obtained by a party before entering into this Agreement. For the avoidance of doubt, any non-disclosure or confidentiality agreement entered into prior to the Commencement Date is terminated and superseded by this Agreement.
- (c) The obligation of confidence in clause 12(a) does not apply to Confidential Information that is:
  - (1) required to be disclosed by law, as long as the recipient:
    - (A) discloses the minimum amount of Confidential Information required to satisfy the law; and
    - (B) before disclosing any information gives a reasonable amount of notice to the discloser and takes all reasonable steps (whether required by discloser or not) to maintain that Confidential Information in confidence;
  - (2) in the public domain otherwise than as a result of a breach of this Agreement or another obligation of confidence; or
  - (3) already known by the recipient independently of its interaction with the other party and free of any obligation of confidence.
- (d) Each party must take all steps and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.
- (e) Each party acknowledges that the value of the other party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause 12 is breached.
- (f) The obligations of confidentiality in this clause 12 survive the termination of this Agreement.

## 13 Assignment

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The Client must not assign any rights or obligations arising out of this Agreement without the prior written consent of MemberCheck which consent is not to be unreasonably withheld.

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## 14 Entire Agreement

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This Agreement is the entire agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements whether oral or in writing (including electronically or by email) in respect of its subject matter and the use of the MemberCheck Service. If MemberCheck and the Client have entered into any other agreements (each **Another Agreement**), by way of example only, a confidentiality agreement, then to the extent there is any inconsistency between Another Agreement and this Agreement, this Agreement prevails.

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## 15 Severance

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Part or all of any clause of this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

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## 16 Notice

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Any notice under this Agreement must be given in writing. MemberCheck may provide notice to the Client via email or through the Client's account. The Client agrees that any such electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing. MemberCheck's notices to the Client will be deemed given upon the first Business Day after MemberCheck sends the electronic communication. The Client will provide notice to MemberCheck by email to support@membercheck.com. The Client's notices to MemberCheck will be deemed given upon receipt.

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## 17 Waiver

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A party's failure to insist that the other party perform any obligation under this Agreement is not a waiver of the right:

- (a) to insist the other party perform, or to claim damages for breach of, that obligation; or
- (b) to insist the other party perform any other obligation,

unless the party provides a waiver in writing.

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## 18 Dispute Resolution

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- (a) If a dispute arises out of or relates to this Agreement, or the breach, termination, validity or subject matter of this Agreement, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, the parties to this Agreement agree to try to settle the dispute in accordance with the following before having recourse to litigation:
  - (1) A party claiming that a dispute has arisen, must give written notice to the other party specifying the nature of the dispute.
  - (2) On receipt of the notice specified in (1) the parties must within seven (7) days of receipt of the notice seek to resolve the dispute.
  - (3) If the dispute is not resolved within seven (7) days or within such further period as the parties agree in writing then the dispute is to be referred to the Australian Disputes Centre (**ADC**) for mediation.
  - (4) The mediation will be conducted in accordance with ADC Commercial Mediation Guidelines.

- (b) If mediation fails to resolve the dispute within thirty (30) days of the dispute being referred to ADC, either party may give notice to the other to end the mediation.

## 19 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in New South Wales, Australia.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 20 Definitions and interpretation

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
<b>Agreement</b>	means this Subscription Agreement including all Schedules, Addenda and Annexures.
<b>Business Days</b>	are Monday to Friday excluding public holidays in New South Wales, Australia.
<b>Business Hours</b>	9:00am to 5:00pm (AEST/AEDT) on Business Days.
<b>Confidential Information</b>	in relation to a party means any information: <ol style="list-style-type: none"> <li>1 regarding the business or affairs of that party;</li> <li>2 regarding the customers, employees or contractors of, or other persons doing business with that party;</li> <li>3 regarding the terms of this Agreement, or the commercial arrangements between the parties;</li> <li>4 which is by its nature confidential or which is designated as confidential by that party;</li> <li>5 which is designated as confidential in this Agreement; or</li> <li>6 which the other party knows, or ought to know, is confidential; and</li> <li>7 in relation to MemberCheck, including data and documentation pertaining to the MemberCheck Service.</li> </ol>
<b>EU GDPR</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

Term	Meaning
<b>Excluded Loss</b>	means loss of revenues, profits, goodwill, bargain or loss of opportunities, anticipated savings, loss of or corruption of data, and any indirect, incidental, special or consequential loss or damage or loss which does not arise naturally or in the ordinary course of business, howsoever caused (regardless of whether or not the possibility of the loss or damage was contemplated or communicated when this Agreement was entered into).
<b>Insolvency Event</b>	is when a party is unable to pay its debts as and when they become due or receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the Client’s assets or undertakings, an application or order is made for the winding up or dissolution of the Client, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Client or other analogous action is taken in any jurisdiction.
<b>MemberCheck Service</b>	means the service supplied by MemberCheck and described in Schedule 1 to the Purchase Order.
<b>Permitted User</b>	means a person accessing or using the MemberCheck Service via the Client’s MemberCheck account, MemberCheck API, user IDs and or passwords.
<b>Purchase Order</b>	means a written order or similar document signed by the Client for its subscription to the MemberCheck Service.
<b>UK GDPR</b>	means the Data Protection Act 2018 and the EU GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the United Kingdom’s European Union (Withdrawal) Act 2018.
<b>Website</b>	means the website located at membercheck.com, membercheck.net or its sub or associated domains operated by Member Check.

## Addenda

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The below Addenda apply to Client's use of the MemberCheck Service if specified in the Purchase Order or otherwise agreed.

- Addendum A – PEP/Sanction & Adverse Media Screening Services
  - Addendum B – Identification Verification Service
  - Addendum C – MemberCheck Data Processing Agreement
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## ADDENDUM A – PEP/SANCTION & ADVERSE MEDIA SCREENING SERVICES

The following terms and conditions apply to the Client's use of the MemberCheck Service to the extent the Client subscribes for a PEP/Sanction & Adverse Media Screening Service. If there is any inconsistency between this Addendum and clauses 1 to 20 of the Agreement, this Addendum prevails in so far as it relates to a PEP/Sanction & Adverse Media Screening Service. By using a PEP/Sanction & Adverse Media Screening Service the Client agrees to be bound by and comply with this Addendum A. Terms used in this Addendum are defined in the Agreement unless defined in clause 1 of this Addendum. Unless otherwise specified clause references are to clauses in this Addendum.

### 1. Definitions

- 1.1 **Data** means data requested from a Database by a Permitted User as part of a Data Request.
- 1.2 **Database** means the PEP/Sanction & Adverse Media Screening Service data service to which the Client has subscribed.
- 1.3 **Data Request** means a request made by a Permitted User through a PEP/Sanction & Adverse Media Screening Service, being a Search Request and/or a Monitor Request.
- 1.4 **Monitor Request** means a request made through a PEP/Sanction & Adverse Media Screening Service to monitor an individual or entity against the Database.
- 1.5 **Search Request** means a request made through a PEP/Sanction & Adverse Media Screening Service to search for information relating to an individual or entity in the Database.

### 2. The PEP/Sanction & Adverse Media Screening Service

- 2.1 The Client acknowledges that MemberCheck provides the Databases under licence from Third Party Suppliers, and it is a requirement of those licences that certain terms and conditions are included in the Client's Agreement in relation to the use of those Databases and Data.
- 2.2 MemberCheck grants a non-transferable, non-assignable, non-sublicensable and non-exclusive licence to Client to allow Permitted Users to access and use the Database to retrieve the Data identified in a Data Request. The Client must not resell, redistribute or relicence the MemberCheck Service in whole or in part unless the Client is a reseller authorised in writing by MemberCheck (and only to the extent authorised) and the Client complies with clause 2(g) of the Agreement and clause 3.4 of this Addendum.

### 3. Scope of Use

- 3.1 The Client undertakes that it must, and must procure that each Permitted User must at all times:
  - 3.1.1 not use Data in any way which might infringe any licence granted to MemberCheck or the Third Party Supplier, any law (including criminal and/or data protection law) and/or use any Data for any unlawful and/or unauthorised purpose;
  - 3.1.2 only allow Permitted Users to make use of and have access to the Database;
  - 3.1.3 not remove any copyright or other notice contained or included in any Data;
  - 3.1.4 acknowledge that the Data is licensed, not sold, and that it obtains no ownership of the Data;
  - 3.1.5 not access or use the MemberCheck Service, a Database and/or Data to build a competitive product or service or to compete in any way with MemberCheck or a Third Party Supplier and must not copy any features, functions or user interfaces of the MemberCheck Service or any part of it;

- 3.1.6 not copy, frame or mirror any part or content of the MemberCheck Service;
  - 3.1.7 not cache or store any Data in order to reuse the Data;
  - 3.1.8 not in any circumstances use nor allow any third party to use, any automated software, process, programme, robot, web crawler, spider, data mining, trawling, screen scraping or other similar software (regardless of whether or not the resulting information would then be used for its internal purposes);
  - 3.1.9 comply with any specific standards, legal and regulatory obligations advised to Client in relation to its use of the MemberCheck Service; and
  - 3.1.10 promptly upon becoming aware of any breach of this clause 3.1 notify MemberCheck of the breach, and promptly provide such details as MemberCheck may reasonably request.
- 3.2 The Client acknowledges and accepts as reasonable that the undertakings given in clause 3.1 above are of material importance to MemberCheck and that MemberCheck has entered into the Agreement and provided the PEP/Sanction & Adverse Media Screening Service data services in reliance on these undertakings. The Client acknowledges that without affecting any rights or remedies that MemberCheck may have, damages would not be an adequate remedy for any breach by the Client of clause 3.1 and that MemberCheck will be entitled to apply for the remedies of injunction, specific performance and other equitable relief for any breach of clause 3.1.
- 3.3 The Client acknowledges that:
- 3.3.1 the Databases and Data are licensed to the Client, not sold; and
  - 3.3.2 it obtains no ownership of a Database or Data; and
  - 3.3.3 if and to the extent MemberCheck or a Third Party Supplier is liable to the Client in respect of a Database, or a PEP/Sanction & Adverse Media Screening Service liability is limited in accordance with Clause 4 of this Addendum.
- 3.4 If the Client is an approved reseller of MemberCheck, clause 2(c)(1) of the Agreement does not prohibit the Client from reselling a PEP/Sanction & Adverse Media Screening Service to its own customers (**Third Party**) provided that the Third Party is required to comply with terms and conditions at least as protective as this Addendum in particular, without limitation, clauses 3.1, 3.2, 3.3 and 4 of this Addendum. For the avoidance of doubt, the Client cannot resell, redistribute or relicense Data only.

#### 4. Liability

- 4.1 Notwithstanding any other provision of the Agreement or this Addendum, no liability or remedy is excluded or limited to the extent that the same may not be excluded or limited by any applicable law.
- 4.2 THE CLIENT ACKNOWLEDGES THAT MEMBERCHECK AND THE THIRD PARTY SUPPLIERS (TOGETHER THE "SUPPLIERS") COMPILE DATA BUT DO NOT ORIGINATE IT. ACCORDINGLY, THE DATABASES, ANY SERVICE AND/OR DATA ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS AND THE SUPPLIERS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND WHETHER STATUTORY, EXPRESS OR IMPLIED, RELATING TO DATA (INCLUDING RELATING TO THE TIMELINESS, CURRENCY, CONTINUITY, ACCURACY, COMPLETENESS, MERCHANTABILITY, ACCEPTABLE QUALITY OR FITNESS FOR A PARTICULAR PURPOSE THEREOF.

- 4.3 THE CLIENT ACKNOWLEDGES THAT EVERY BUSINESS DECISION INVOLVES THE ASSUMPTION OF A RISK AND THAT THE SUPPLIERS, IN FURNISHING THE DATA TO THE CLIENT, DO NOT AND WILL NOT UNDERWRITE THAT RISK, IN ANY MANNER WHATSOEVER. NEITHER THE SUPPLIERS NOR ANY OTHER DATA SUPPLIER, SHALL BE LIABLE TO EITHER THE CLIENT OR ANY THIRD PARTY FOR ANY LOSS CAUSED IN WHOLE OR IN PART BY THE SUPPLIERS PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING, SUPPLYING OR DELIVERING THE DATA AND THE CLIENT AGREES NOT TO BRING ANY CLAIM AGAINST MEMBERCHECK, A THIRD PARTY SUPPLIER AND/OR OTHER DATA SUPPLIERS IN RESPECT THEREOF.
- 4.4 THE CLIENT ACKNOWLEDGES THAT (A) USE OF THE DATABASES BY IT AND/OR ANY PERMITTED USER IS AT THE CLIENT'S SOLE RISK, (B) WHILST THE SUPPLIERS OBTAINS THE DATA IN GOOD FAITH FROM SOURCES WHICH THE SUPPLIERS CONSIDER TO BE RELIABLE, THE CONTENTS OF THE DATABASES ARE BASED ON DATA SUPPLIED BY THIRD PARTIES AND ARE NOT INDEPENDENTLY VERIFIED, (C) THE SUPPLIERS DO NOT GUARANTEE THE SEQUENCE, ACCURACY, COMPLETENESS AND/OR TIMELINESS OF THE DATABASES, (D) THE MEMBERCHECK SERVICE IS NOT INTENDED TO AND DOES NOT PROVIDE TAX, LEGAL OR INVESTMENT ADVICE, (E) THE CLIENT SHOULD SEEK INDEPENDENT TAX, LEGAL AND/OR INVESTMENT ADVICE BEFORE ACTING ON DATA OBTAINED FROM THE DATABASES, AND (F) THE SUPPLIERS SHALL NOT BE UNDER, AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY LAW ALL LIABILITY TO THE CLIENT FOR, ANY LIABILITY WHATSOEVER IN RESPECT OF (i) ANY MISTAKES, ERRORS, INACCURACIES OR OMISSIONS IN, OR INCOMPLETENESS OF, THE DATABASES, (ii) DELAYS IN UPDATING THE DATABASES OR NON-AVAILABILITY THEREOF (iii) LOSS OF PROFIT, BUSINESS REVENUE, GOODWILL AND ANTICIPATED SAVINGS (WHETHER DIRECT OR INDIRECT) INCURRED THROUGH THE USE OF THE DATABASES OR DATA; (iv) TRADING, INVESTMENT OR OTHER LOSSES WHICH CLIENT MAY INCUR AS A RESULT OF USE OF OR RELIANCE UPON THE DATABASES AND/OR DATA AND/OR (v) INTERNET FAILURE, AND/OR FAILURE OF THE CLIENT TO HAVE IN PLACE ANY NECESSARY SOFTWARE OR EQUIPMENT; AND/OR (vi) ANY CLAIM THAT THE PROVISION OF DATA INFRINGES ANY LAW.
- 4.5 For the avoidance of doubt MemberCheck and its licensors may disclose the identity of the Client, its Permitted Users and employees to meet any requirement of any obligation of law. The Client warrants and represents that it has secured the consent of each Permitted User or other person whose personal data is disclosed to MemberCheck to the use and disclosure of that information by MemberCheck and its licensors as may be required under any applicable law.

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## ADDENDUM B – IDENTITY VERIFICATION SERVICE

The following terms and conditions apply to the Client's use of the MemberCheck Service to the extent the Client has selected to subscribe for or uses identity verification data services to conduct identity verification under anti-money laundering legislation and other customer due diligence (**Identity Verification Service**). If there is any inconsistency between this Addendum and clauses 1 to 20 of the Agreement, this Addendum prevails in so far as it relates to the Identity Verification Service. By using the Identity Verification Service, the Client agrees to be bound by and comply with this Addendum B. Terms used in this Addendum are defined in the Agreement unless defined in clause 1 of this Addendum. Unless otherwise specified, clause references are to clauses in this Addendum.

### 1. Definitions

- 1.1 **Customer** means a customer or proposed customer of the Client and where the Client is a Reseller includes a Principal and a customer or proposed customer of a Principal.
- 1.2 **Database** means the data services of Data Vendors used to retrieve or confirm data for the purposes of providing the Identity Verification Service.
- 1.3 **Data Vendor** means a third party supplier of information or data services provided in the Identity Verification Service (which supplier may be a Government agency such as Department of Internal Affairs (NZ) and the Attorney General's Department as the responsible agency for the Document Verification Service (DVS) (Australia)).
- 1.4 **Identity Verification** means a verification attempt of a Customer's identity by or on behalf of MemberCheck, a Client or a Principal using the Identity Verification Service.
- 1.5 **Principal** means a Reseller's customer.
- 1.6 **Reseller** means a person authorised by MemberCheck to on-sell the MemberCheck Service incorporating the Identity Verification Service.

### 2. The Identity Verification Service

- 2.1 The Client acknowledges that:
  - 2.1.1 access to data services forming part of the Identity Verification Service may be suspended or removed by a Data Vendor; and
  - 2.1.2 the Identity Verification Service only verifies that the information provided by a Customer is consistent with the information held in the Databases (except in the case of biometric face matching where no identity verification is done).
- 2.2 The Client must comply with MemberCheck's restrictions and instructions in relation to the use of the Identity Verification Service.
- 2.3 The Client authorises MemberCheck and its Data Vendors to collect personal information from its Customers and warrants that it has authority from Customers to do so.
- 2.4 The Client must ensure that Customers are advised that the Identity Verification Service is provided by Data Vendors.
- 2.5 The Client must retain and make available to MemberCheck and Data Vendors on request sufficient information (including in relation to Identity Verifications performed) to, among other things, enable MemberCheck to comply with its obligations to Data Vendors and to demonstrate compliance with the Agreement and this Addendum. Data Vendors may share this information for compliance purposes.

### 3. Consents

- 3.1 The Client must ensure that:
  - 3.1.1 Customers provide any necessary consents required by applicable law, MemberCheck or a Data Vendor (in written or electronic form) to use the information provided by the Customer before any Identity Check is performed;
  - 3.1.2 evidence of all consents is retained and must use best endeavors to provide such consents to MemberCheck within 7 Business Days of a request by MemberCheck;
  - 3.1.3 Customers acknowledge and agree that evidence of consents provided may be forwarded to MemberCheck and Data Vendors; and
  - 3.1.4 all information and records about Identity Verification required by a Data Vendor is provided and that a Data Vendor can provide the information and records to other Data Vendors.
- 3.2 If required, the Client will provide and will procure that each Customer provides a specific consent complying with a Data Vendor's or MemberCheck's requirements prior to access to a Database.
- 3.3 Without limiting clauses 3.1 and 3.2, the following consents will be required:
  - 3.3.1 where the Client or a Customer wishes to perform Identity Verification on an ongoing basis, each Customer must provide consent to ongoing checks and the Client must retain evidence of such consent;
  - 3.3.2 a Customer will be required to provide an electronic consent when an Identity Check is being requested by the Customer;
  - 3.3.3 the Client will be required to electronically confirm that it has obtained the Customer's consent to perform the Identity Check when an Identity Check is performed by the Client; and
  - 3.3.4 as consent to ongoing Identity Verification expires after 18 months, a new consent will be required from a Customer.
- 3.4 The Client must ensure that a Customer can withdraw consent to an Identity Check at any time:
  - 3.4.1 by cancelling any Identity Check currently in progress;
  - 3.4.2 by notifying the Client or the Principal that the Customer wishes to withdraw consent; or
  - 3.4.3 by ceasing to be a Customer.

### 4. Other Requirements

- 4.1 If the Client is required to send, display or provide access to personal information stored, held or displayed by a Data Vendor or MemberCheck it will only do so to a person who has the right to receive or view such personal information in accordance with applicable law and will take all necessary steps to prevent any other disclosure of such information.
- 4.2 Where necessary, the Client authorises MemberCheck and a Data Vendor to:
  - 4.2.1 apply for approval for the Client or a Principal to access the Data Vendor's Databases and to receive login credentials; and
  - 4.2.2 conduct Identity Verification against the Data Vendor's Databases, including using the Client's or the Principal's credentials provided upon approval by the Data Vendor as required.

- 4.3 Unless otherwise approved by a Data Vendor, no person other than MemberCheck's or the Client's authorised staff may directly access the result of an Identity Check against the Data Vendor's Databases, including that the Customer who is the subject of the Identity Check may not be provided direct access to the result.
- 4.4 Where required by a Data Vendor and advised by MemberCheck, the Client and each Principal must comply with any terms of use or policies of the Data Vendor as may be amended from time to time and the Client acknowledges and agrees that all disclaimers, exclusions, limitations of liability, and indemnities are directly enforceable by the Data Vendor. MemberCheck may terminate the Client's access to the Identity Verification Service for a failure to comply with any such terms of use or policies.
- 4.5 The Client appoints MemberCheck and its Data Vendors as data processors for the purposes of EU GDPR or UK GDPR, where applicable, and must ensure the Principal appoints MemberCheck and its Data Vendor as data processors for the purposes of EU GDPR or UK GDPR, where applicable.

## **5. Clients who are Resellers**

If a Client is a Reseller it must:

- 5.1 not provide or otherwise make available, the Identity Verification Service or any component of it in any form to any person without the prior written consent of MemberCheck;
- 5.2 obtain prior written consent from MemberCheck for any branded and /or customised version of the Identity Verification Service. A fee may be payable for the setup and administration of any branded version of the Identity Verification Service. The fee will be agreed upon prior to the commencement of rebranding; and
- 5.3 have an agreement in place with Principals prior to supplying the Identity Verification Service to a Principal or using the Identity Verification Service for or on behalf of a Principal which agreement includes the terms and conditions of this Addendum.

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## ADDENDUM C - DATA PROCESSING AGREEMENT

This Data Processing Agreement (**DPA**) applies to Client Personal Data Processed by MemberCheck Pty Ltd ACN 129 012 344 (**MemberCheck**) on behalf of the Client and is incorporated into and forms part of the Agreement.

Capitalised terms used in this DPA have the meanings set out in this DPA. Capitalised terms not otherwise defined in this DPA have the meaning given to them in the Agreement. Except as modified below, the terms of the Agreement remain in full force and effect and govern this DPA.

### 1. Effective Date of DPA:

- 1.1 If the Client has issued a Purchase Order to MemberCheck identifying in Schedule 1 of the PO that the EU GDPR or UK GDPR applies, this DPA becomes legally binding on (and the Effective Date of this DPA is) the Commencement Date specified in Schedule 2 of the PO.
- 1.2 If clause 1.1 does not apply, this DPA becomes legally binding on (and the Effective Date of this DPA is) the earlier of the date:
  - (a) the Client gives MemberCheck notice in accordance with clause 5(b) of the Agreement;
  - (b) the Client confirms in writing (which may be by email) its agreement to this DPA as an amendment to the Agreement;
  - (c) MemberCheck and the Client both sign a copy of the DPA; or
  - (d) MemberCheck and the Client enter into an Agreement to which this DPA is an Addendum.
- 1.3 Clauses 1.2(a) and 1.2(b) can only apply where the Client and MemberCheck are parties to an Agreement and accordingly, the Client and MemberCheck agree that this DPA supersedes and replaces any DPA in effect between them from the Effective Date.

### 2. Definitions

- 2.1 In this DPA, the following terms have the meanings set out below:
  - (a) **Agreement** means a Subscription Agreement between the Client and MemberCheck for access to and use of the MemberCheck Service by the Client which the Client has agreed to and entered into either:
    - (i) by issuing a Purchase Order; or
    - (ii) by otherwise entering into a Subscription Agreement with MemberCheck;
  - (b) **Client** means the entity/organisation that has issued a Purchase Order to MemberCheck subscribing to the MemberCheck Service or has otherwise entered into this DPA or an Agreement with MemberCheck;
  - (c) **Client Personal Data** means any data that is Personal Data, to which the EU GDPR or UK GDPR applies, Processed by MemberCheck on behalf of the Client pursuant to or in connection with the Agreement;
  - (d) **Contract Details** means where there is a PO, the details specified in the PO otherwise the relevant details specified in the Agreement;
  - (e) **EU GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);
  - (f) **Purchase Order** or **PO** means a written order or similar document signed by the Client for its subscription to the MemberCheck Service;

- (g) **Restricted Transfer** means a transfer of Client Personal Data to a third country where the transfer is prohibited by the EU GDPR or UK GDPR (as applicable);
  - (h) **SC Clauses** means the following standard contractual clauses, as applicable:
    - (i) Controller to Processor Standard Contractual Clauses adopted pursuant to the European Commission's Implementing Decision (EU) 2021/914 of 4 June 2021 on Standard Contractual Clauses for the transfer of personal data to third countries; or
    - (ii) Processor to Processor Standard Contractual Clauses adopted pursuant to the European Commission's Implementing Decision (EU) 2021/914 of 4 June 2021 on Standard Contractual Clauses for the transfer of personal data to third countries;
  - (i) **Subprocessor** means any person (excluding an employee of MemberCheck or any of its sub-contractors) appointed by or on behalf of MemberCheck to Process Client Personal Data in connection with the Agreement;
  - (j) **UK GDPR** means the Data Protection Act 2018 and the EU GDPR as it forms part of the the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018.
- 2.2 The terms, "Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", and "Processing" have the same meaning as in the EU GDPR or the UK GDPR (as applicable), and their cognate terms are to be construed accordingly.
- 3. Processing of Client Personal Data**
- 3.1 MemberCheck will Process Client Personal Data on the Client's documented instructions (including as set out in the Agreement and this DPA). Client represents to MemberCheck that it has all rights and authorisations necessary for MemberCheck to Process Client Personal Data and that Client's instructions comply with applicable law.
- 3.2 The Client instructs MemberCheck (and authorises MemberCheck to instruct each Subprocessor) to Process Client Personal Data as necessary for the provision of the MemberCheck Service and as otherwise documented in this DPA and the Agreement. Additional instructions for the Processing of Client Personal Data must be prior agreed in writing. MemberCheck may charge a reasonable fee to comply with additional instructions.
- 3.3 Unless prohibited by applicable law, MemberCheck will inform Client if MemberCheck is subject to a legal requirement to Process Client Personal Data in contravention of the Client's instructions.
- 3.4 Where Client is a Controller, Client is responsible for compliance with the requirements of laws including the EU GDPR or UK GDPR (as applicable) applicable to Controllers.
- 3.5 The Client must notify MemberCheck if the Client is a Processor on behalf of other Controllers, and Client:
- (a) acknowledges it is the single point of contact for MemberCheck;
  - (b) represents and warrants it has obtained all necessary authorisations and instructions from the Controllers;
  - (c) must issue all instructions and exercise all rights on behalf of such other Controllers; and
  - (d) is responsible for compliance with the requirements of laws including the EU GDPR or UK GDPR (as applicable) applicable to Processors.
- 3.6 Taking into account the nature of the Processing, Client agrees that it is unlikely MemberCheck:

- (a) will know the identity of the Controller if Client is a Processor and Client agrees to fulfil MemberCheck's Processor obligations to Client's Controllers where there is a Restricted Transfer;
- (b) can form an opinion on whether an instruction infringes the EU GDPR or UK GDPR (as applicable) or other applicable law. However, if MemberCheck forms such an opinion it will immediately inform Client.

3.7 Client is responsible for, and warrants that it is in, compliance with all applicable laws including EU GDPR and UK GPDR (as applicable).

#### **4. Details of Processing**

4.1 The subject matter of the Processing is Client Personal Data. The duration, nature and purpose of the Processing, the types of Client Personal Data and categories of Data Subjects Processed are specified in Annex I to this DPA. The obligations and rights of Client are set out in the Agreement and this DPA.

#### **5. MemberCheck Personnel**

5.1 MemberCheck will take steps to ensure that access to Client Personal Data is limited to those individuals who need to know or access the relevant Client Personal Data, for the purposes of the Agreement or this DPA, ensuring that all such individuals are subject to obligations of confidentiality.

#### **6. Security**

6.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, MemberCheck will in relation to the Client Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures listed in Annex II. These measures may be modified from time to time.

6.2 The Client acknowledges that the security measures in Annex II are appropriate and will notify MemberCheck prior to any intended Processing for which the security measures may not be appropriate.

6.3 In assessing the appropriate level of security, MemberCheck will take account of the risks that are presented by Processing, in particular from a Personal Data Breach.

#### **7. Subprocessing**

7.1 The Client authorises MemberCheck to engage (and to permit each Subprocessor appointed in accordance with this clause 7 to engage) Subprocessors. Where the Client is a Processor, the Client warrants it is authorised to allow Subprocessing.

7.2 MemberCheck will make available to the Client on request or on its Website a list of Subprocessors. MemberCheck may continue to use those Subprocessors already engaged by MemberCheck at the Effective Date. MemberCheck will inform the Client of any intended changes to Subprocessors. The Client may object to the change on reasonable grounds by providing written notice to MemberCheck within 10 days of receiving the notice. MemberCheck and the Client will consult in good faith to address the Client's concerns.

7.3 MemberCheck will enter into a written contract (which may be electronic) with each Subprocessor including data protection obligations. MemberCheck remains liable to the Controller for the Subprocessor's performance of its data protection obligations.

7.4 Client Personal Data may be disclosed to Subprocessors engaged in accordance with this clause 7.

## **8. Data Subject Rights**

- 8.1 Taking into account the nature of the Processing, MemberCheck will assist the Client (at Client's cost) by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the obligations to respond to requests to exercise Data Subject rights under the EU GDPR or UK GDPR (as applicable).

## **9. Personal Data Breach**

- 9.1 MemberCheck will notify the Client without undue delay if MemberCheck becomes aware of a Personal Data Breach affecting Client Personal Data.

## **10. Deletion or return of Client Personal Data**

- 10.1 Subject to clause 10.2, MemberCheck will after the date of termination of the Agreement where it involves the Processing of Client Personal Data, at the option of the Controller, delete or return Client Personal Data.

- 10.2 Client Personal Data may be retained if required or permitted by applicable law.

## **11. Assistance and Audit rights**

- 11.1 MemberCheck will assist the Client in ensuring compliance with its obligations in relation to the security of personal data under the EU GDPR or UK GDPR (as the case may be) taking into account the nature of processing and the information available to MemberCheck. MemberCheck may charge a reasonable fee for assistance.

- 11.2 Subject to clause 11.3, MemberCheck will make available to the Client on reasonable request all information necessary to demonstrate compliance with this DPA, and allow for and contribute to audits, including inspections, by the Client or an auditor mandated by the Client (not being a competitor of MemberCheck) in relation to the Processing of the Client Personal Data. Unless required by applicable law, audits will be carried out not more than once every 12 months.

- 11.3 The Client will give MemberCheck reasonable notice of any audit or inspection to be conducted under clause 11.2 and will make (and ensure that its mandated auditor makes) reasonable endeavours to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to premises, equipment, personnel and business of MemberCheck (and Subprocessors, if applicable) while its personnel are on those premises in the course of such an audit or inspection. MemberCheck need not give access to its premises for the purposes of such an audit or inspection:

- (a) to any individual unless he or she produces reasonable evidence of identity and authority;
- (b) unless the auditor agrees to comply with MemberCheck's reasonable confidentiality, access and security requirements; or
- (c) outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Client has given prior notice to MemberCheck that this is the case.

## **12. Restricted Transfers**

### **12.1 Restricted Transfer of EU Client Personal Data**

The Client (as "data exporter") and MemberCheck (as "data importer") agree that any Restricted Transfer under the EU GDPR from the Client to MemberCheck will be subject to the SC Clauses which are deemed entered into by the Client and MemberCheck and incorporated by reference into this DPA and accordingly form part of this DPA completed as follows (clause references in the below paragraphs are to clauses in the SC Clauses unless otherwise specified):

- (a) the provisions of Module Two and Module Three of the SC Clauses apply (as applicable);
- (b) in clause 7, the optional docking clause applies;
- (c) in clause 9(a), Option 2 applies, and the time period for prior notice is as set out in clause 7.2 of this DPA;
- (d) in clause 11 the optional language does not apply;
- (e) in clause 13 all square brackets are removed;
- (f) in clause 17, Option 1 applies and the SC Clauses will be governed by the law of Ireland;
- (g) in clause 18(b), disputes will be resolved before the courts of Ireland;
- (h) Annex 1 of the Appendix to the SC Clauses is deemed completed with the information set out in Annex 1 to this DPA, as applicable;
- (i) Annex II of the Appendix to the SC Clauses is deemed completed with the information set out in Annex II to this DPA.

## 12.2 Restricted Transfer of UK Client Personal Data

The Client (as "data exporter") and MemberCheck (as "data importer") agree that any Restricted Transfer under the UK GDPR from the Client to MemberCheck will be subject to the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses (**UK Addendum**), which UK Addendum is attached to and incorporated in this DPA as Exhibit A and accordingly is deemed entered into by the Client and MemberCheck.

## 12.3 Other Requirements

- (a) The parties agree that where the SC Clauses are or the UK Addendum is replaced or superseded by new standard contractual clauses or a new addendum, as applicable (**New SCCs**) for the purposes of the EU GDPR or the UK GDPR respectively, the data importer may give notice to the data exporter and, with effect from the date specified in such notice, the New SCCs specified in such notice apply going forward. To the extent that the use of the New SCCs require the parties to complete additional information for compliance with the EU GDPR or the UK GDPR as applicable, the parties agree to reasonably and promptly work together to complete such additional information.
- (b) If any means of legitimizing Restricted Transfers set out in the DPA (or incorporated by reference) becomes invalid, the data importer may by notice to the data exporter, with effect from the date specified in the notice, amend or put in place alternative arrangements to enable Restricted Transfers.

## 13. General Terms

### 13.1 Other than as required by the SC Clauses, the UK Addendum or other applicable law:

- (a) the liability of each party under this DPA is subject to the exclusions and limitations of liability in the Agreement;
- (b) this DPA is governed by and to be construed in accordance with the governing law and jurisdiction provisions of the Agreement.

### 13.2 Nothing in this DPA is intended to vary or modify the SC Clauses or the UK Addendum, where to do so would be illegal or invalid. In the event of any conflict between:

- (a) this DPA and the SC Clauses, the SC Clauses prevail in relation to a Restricted Transfer subject to the EU GDPR; and

- (b) this DPA and the UK Addendum, the UK Addendum prevails in relation to a Restricted Transfer subject to the UK GDPR .

13.3 Subject to clause 13.2, with regard to the subject matter of this DPA, in the event of inconsistencies between the provisions of this DPA and any other agreements between the parties (including the Agreement) and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this DPA, the provisions of this DPA shall prevail but only in relation to the Processing of Client Personal Data.

13.4 Subject to clause 12.3(b), should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA remains valid and in force. The invalid or unenforceable provision will be either:

- (a) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible,
- (b) construed in a manner as if the invalid or unenforceable part had never been contained in the DPA.

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## ANNEX I

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### A. LIST OF PARTIES

**Data exporter(s):** *[Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]*

**Name:** Client

**Address:** As specified in the Contract Details

**Contact person's name, position and contact details:** As specified in the Contract Details

**Activities relevant to the data transferred under the SC Clauses:** The activities specified in clause 4 of the DPA and Annex I, Part B below of the DPA.

**Signature and date:** When this DPA becomes legally binding in accordance with clause 1 of this DPA, the data exporter is deemed to have signed this Annex 1

**Role (controller/processor):** Controller unless the Client notifies MemberCheck under clause 3.5 of the DPA or otherwise.

**Data importer(s):** *[Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]*

**Name:** Member Check Pty Ltd ACN 129 012 344

**Address:** Suite 213, 7 Railway Street, Chatswood NSW 2067 Australia

**Contact person's name, position and contact details:** Compliance and Services Team, compliance@membercheck.com

**Activities relevant to the data transferred under the SC Clauses:** The activities specified in clause 4 of the DPA and Annex I, Part B below of the DPA.

**Signature and date:** When this DPA becomes legally binding in accordance with clause 1 of this DPA, the data importer is deemed to have signed this Annex 1

**Role (controller/processor):** Processor

### B. DESCRIPTION OF TRANSFER

*Categories of data subjects whose personal data is transferred*

The Client determines the Data Subjects which could include Client's employees, contractors, end users, customers and potential customers and other third parties.

*Categories of personal data transferred*

The Client Personal Data uploaded to the MemberCheck Service may include name, date of birth, address or country of residence, gender and other information considered appropriate to assist in identifying a Data Subject.

*The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).*

Continuous depending on the use of the MemberCheck Service by the Client.

*Nature of the processing*

The provision of the MemberCheck Service and as otherwise set out in the Agreement and this DPA.

*Purpose(s) of the data transfer and further processing*

To provide the MemberCheck Service.

*The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period*

The duration of the provision of the MemberCheck Service to the Client.

*For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing*

As for the data importer.

### **C. COMPETENT SUPERVISORY AUTHORITY**

*Identify the competent supervisory authority/ies in accordance with Clause 13 of the SC Clauses*

Where the data exporter is established in an EU Member State: The supervisory authority applicable to the data exporter in its EEA country of establishment shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679: The supervisory authority of the Member State where data exporter's representative is established shall act as competent supervisory authority.

Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679: The supervisory authority of the Member State in which the data subjects relevant to the transfer are located shall act as competent supervisory authority.

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ANNEX II - TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

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Data importer will maintain technical and organisational measures for the protection of Client Personal Data including:

- Measures of pseudonymisation and encryption of personal data
- Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services
- Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident
- Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing

*For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter*

As set out above.

EXHIBIT A

**International Data Transfer Addendum to the EU Commission Standard Contractual Clauses**

VERSION B1.0, in force 21 March 2022

**Part 1: Tables**

(a) **Table 1: Parties**

<b>Start date</b>	The Effective Date of the Data Processing Agreement to which this Addendum is attached ( <b>DPA</b> ).	
<b>The Parties</b>	<b>Exporter (who sends the Restricted Transfer)</b>	<b>Importer (who receives the Restricted Transfer)</b>
<b>Parties' details</b>	<p>Full legal name: Client named in the Contract Details</p> <p>Trading name (if different): As specified in the Contract Details (if applicable)</p> <p>Main address (if a company registered address): As specified in the Contract Details</p> <p>Official registration number (if any) (company number or similar identifier): As specified in the Contract Details (if applicable)</p>	<p>Full legal name: Member Check Pty Ltd ACN 129 012 344</p> <p>Trading name (if different): N/A</p> <p>Main address (if a company registered address): Suite 213, 7 Railway Street, Chatswood, NSW 2067 Australia</p> <p>Official registration number (if any) (company number or similar identifier): ACN 129 012 344</p>
<b>Key Contact</b>	<p>Full Name (optional):</p> <p>Job Title:</p> <p>Contact details including email:</p>	<p>Full Name (optional):</p> <p>Job Title:</p> <p>Contact details including email:</p>
<b>Signature (if required for the purposes of Section 2)</b>	The Exporter has agreed to be bound to this Addendum and is deemed to have signed it when this DPA becomes legally binding in accordance with clause 1 of this DPA.	The Importer has agreed to be bound to this Addendum and is deemed to have signed it when this DPA becomes legally binding in accordance with clause 1 of this DPA.

(b) **Table 2: Selected SCCs, Modules and Selected Clauses**

<p><b>Addendum EU SCCs</b></p>		<p>The version of the Approved EU SCCs which this Addendum is appended to, detailed below, including the Appendix Information:</p> <p>Date: N/A</p> <p>Reference (if any): N/A</p> <p>Other identifier (if any): N/A</p> <p>Or</p> <p>the Approved EU SCCs, including the Appendix Information and with only the following modules, clauses or optional provisions of the Approved EU SCCs brought into effect for the purposes of this Addendum:</p>				
		Module	Module in operation	Clause 7 (Docking Clause)	Clause 11 (Option)	Clause 9a (Prior Authorisation or General Authorisation)
1						
2	Applies	Applies	Not applicable	Option 2	As set out in clause 7.2 of the DPA	No
3	Applies	Applies	Not applicable	Option 2	As set out in clause 7.2 of the DPA	No
4						

**(c) Table 3: Appendix Information**

“**Appendix Information**” means the information which must be provided for the selected modules as set out in the Appendix of the Approved EU SCCs (other than the Parties), and which for this Addendum is set out in:

Annex 1A: List of Parties: As specified in the Contract Details

Annex 1B: Description of Transfer: As described in clause 4 and Annex I of the DPA

Annex II: Technical and organisational measures including technical and organisational measures to ensure the security of the data: As set out in Annex II of the DPA

Annex III: List of Sub processors (Modules 2 and 3 only): As provided to the Exporter or specified on the Website at [www.membercheck.com](http://www.membercheck.com)

**(d) Table 4: Ending this Addendum when the Approved Addendum Changes**

<b>Ending this Addendum when the Approved Addendum changes</b>	<p>Which Parties may end this Addendum as set out in Section 19 of the Mandatory Clauses:</p> <ul style="list-style-type: none"> <li>Importer</li> <li>Exporter</li> <li>neither Party</li> </ul>
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**Part 2 Mandatory Clauses:**

<b>Mandatory Clauses</b>	<p>Part 2: Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses.</p>
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