

# Checkmate Terms of Use

Welcome to Checkmate, an online audit management service. These terms of use are intended to explain our obligations as a service provider and your obligations as a customer. Please read them carefully.

These Terms of Use are binding on any use of the service and apply to you from the time that Checkmate provides you with access to the service.

The Checkmate service will evolve over time based on user feedback. These terms of use are not intended to address every issue raised by the use of the Checkmate service. Checkmate reserves the right to change these terms of use at any time, effective upon the posting of modified terms and Checkmate will make every effort to communicate these changes to you via email.

By accessing and using the service you represent and acknowledge that you have read, understood and accepted these terms of use, each notice that Checkmate sends to you, each condition that Checkmate posts on the website and Checkmate's privacy policy (each as updated from time to time) (together, the "agreement") and agree to be bound by them, and that you have the authority to act on behalf of any person for whom you are using the service. You are deemed to have accepted and agreed to such matters on behalf of any entity for whom you grant use of the service.

We recommend you visit the website from time to time to check for any updates to this agreement. If you do not agree with any updated terms, conditions, pricing or policies, you must immediately cancel your subscription and cease using the service.

These terms of use were last updated on 6 April 2018.

## 1. Definitions

"Agreement" means these terms of use, each notice that Checkmate sends to you, each condition that Checkmate posts on the website and Checkmate's privacy policy (each as updated from time to time).

"Access Fee" means the monthly fee (excluding any taxes) payable by you in accordance with the fee schedule set out on the Website (which Checkmate may change from time to time on notice to you) for the corresponding services that You select.

"Confidential Information" includes all confidential materials and information exchanged between the parties to this agreement, whether in writing, electronically or orally, including (where Checkmate is the disclosing party) the Service.

"Data" means any data inputted by you or with your authority into the website.

"Checkmate" means Checkmate NZ Limited and all current and future global subsidiaries of Checkmate NZ Limited.

"Intellectual Property Right" means any patent, trade mark, service mark, copyright, moral right, any other intellectual or industry property rights, anywhere in the world whether or not registered.

"Invited User" means any person or entity, other than the subscriber, that uses the service with the authorisation of the subscriber from time to time.

"Plan" means the specific services and add-ons that you select or which have been added to the service with your authorisation or as a result of your use of the service.

"Service" means the audit management services made available (as may be changed or updated from time to time by Checkmate) via the website.

"Subscribe" means your selection of an audit solution in respect of which an access fee is payable.

"Subscriber" means the person who registers to use the service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.

"Subscription" means your right to use and access the service under your selected plan, in accordance with this agreement.

"Website" means the Checkmate application, the Internet site at the domain [www.checkmatenz.co.nz](http://www.checkmatenz.co.nz) or any other site operated by Checkmate incorporating the service.

"You" means the subscriber, and where the context permits, an invited user. "Your" has a corresponding meaning.

## **2. Use of Software / App**

Checkmate grants you the right to access and use the service specific to your plan, via the website. This right is non-exclusive, non-transferable, and limited by and subject to this agreement. You acknowledge and agree that:

1. the Subscriber is responsible for all invited users' use of the service;
2. Subscriber controls each invited users' level of access to the relevant audit solution and service at all times and can revoke or change an invited user's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an invited user or shall have that different level of access, as the case may be;
3. if there is any dispute between a subscriber and an invited user regarding access to any Service, the subscriber shall decide what access or level of access to the relevant data or service that invited user shall have, if any.

## **3. Your Obligations**

### **1. Payment obligations**

Your Checkmate subscription will automatically renew, and you will be automatically charged the then current access fees on a recurring basis until you cancel your subscription. You may cancel your subscription at any time by sending an e mail to [contact@checkmate.co.nz](mailto:contact@checkmate.co.nz), you will still be charged for the one month period in which you cancel your subscription.

All Checkmate invoices will be sent to you by email, to the email address you have provided to Checkmate. You are responsible for payment of all taxes in addition to the access fee.

### **2. Preferential pricing or discounts:**

You may from time to time be offered preferential pricing or discounts for the access fees as a result of the number of units added under your subscription. Eligibility for such preferential pricing or discounts is conditional upon your ongoing timely payment of all access fees as they fall due in relation to all of your audit solutions. Without prejudice to any other rights that Checkmate may have under this agreement or at law, Checkmate reserves the right to render invoices for the full (non-discounted) access fees or suspend or terminate your use of the service in respect of any or all of your audit solutions in the event that any invoices for those access fees are not paid in full by the due date for payment.

### **3. General obligations:**

You must only use the service and website for your own lawful internal business purposes, in accordance with this agreement. You may use the service and website on behalf of others or in order to provide services to others but if you do so:

1. You must ensure that you are authorised to do so under your subscription; and
2. You acknowledge and agree that you are responsible for all persons for whom or to whom services are provided and you hereby indemnify and hold harmless Checkmate for and against all loss and damage howsoever arising in connection with such services.

### **4. Access conditions:**

1. You must ensure that all usernames and passwords required to access the service are kept secure and confidential. You must immediately notify Checkmate of any unauthorised use of your passwords or any other breach of security and Checkmate will reset your password and you must take all other actions that Checkmate reasonably deems necessary to maintain or enhance the security of Checkmate's computing systems and networks and your access to the services.

2. As a condition of this agreement, when accessing and using the Services, you must:

- a. not attempt to undermine the security or integrity of Checkmate's computing systems or networks or, where the services are hosted by a third party, that third party's computing systems and networks;
- b. not use, or misuse, the services in any way which may impair the functionality of the services or website, or other systems used to deliver the services or impair the ability of any other user to use the services or website;
- c. not attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the services are hosted;
- d. not transmit, or input into the website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or data in violation of any law (including data or other material protected by copyright or trade secrets which you do not have the right to use);
- e. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services or to operate the website except as is strictly necessary to use either of them for normal operation; and
- f. not otherwise use the service in any way that may be adverse to Checkmate.

### **5. Usage Limitations:**

Use of the service may be subject to limitations, including but not limited to the number of users you are permitted to access the service. Any such limitations will be communicated to you by email, to the email address you have provided to Checkmate.

### **6. Communication Conditions:**

As a condition of this agreement, if you use any communication tools available through the website (such as any email, SMS message or notice), you agree only to use such communication tools for lawful and legitimate purposes.

When you make any communication on the website, you represent that you are permitted to make such communication. Checkmate is under no obligation to ensure that the communications on the website are legitimate or that they are related only to the use of the services.

#### **7. Indemnity:**

You indemnify Checkmate against: all claims, costs, damage and loss arising from your use of the services or your breach of any of the terms or conditions of this Agreement or any obligation you may have to Checkmate, including (but not limited to) any costs relating to the recovery of any access fees that are due but have not been paid by you.

#### **4. Confidentiality and Privacy**

##### **1. Confidentiality:**

In return for the following undertakings, each party ("Discloser") will disclose to the other party ("Recipient") the discloser's confidential Information relevant for the purpose of Checkmate providing, and you and each invited user using, the services in accordance with this agreement ("Purpose").

1. Recipient must treat all of discloser's confidential Information whether gained in writing, orally, by demonstration, description, inspection or otherwise and whether gained before or after the date of this undertaking, in the strictest confidence and unless recipient receives discloser's prior written consent, recipient must not:

i. use the discloser's confidential Information other than for the purpose or otherwise in any way which is likely to be detrimental to or in conflict with discloser's interests; or

ii. copy or reproduce any of the discloser's confidential Information in any way.

2. Recipient will establish and maintain such security measures and procedures as are reasonably practicable to protect the discloser's confidential Information and to prevent its unauthorised access, acquisition or use by any unauthorised person. Recipient will immediately notify discloser as soon as recipient becomes aware of any unauthorised access to, or disclosure of the discloser's confidential Information.

3. Recipient may only disclose the discloser's confidential information to those of recipient's staff that need it for the purpose, but before recipient does so it must first inform recipient's staff of the confidential nature of the discloser's confidential information and ensure each person is aware of their obligations with respect to that confidential information and treats all such confidential information in the strictest confidence and in accordance with this undertaking.

4. If recipient is legally required to disclose any of the discloser's confidential information, recipient must advise discloser before disclosing it, and must only disclose that part of the discloser's confidential information that discloser's legal advisers reasonably believe is necessary to disclose by law.

5. The term confidential Information does not extend to information which the parties agree in writing to exclude from the terms of this undertaking; is at the date it is gained by recipient already properly in recipient's possession in written form from sources other than discloser, and recipient is under no obligation of confidence with respect to that information; becomes, after the date it is gained by recipient publicly available from sources other than discloser without fault on that

source's part; or is, after the date it is gained by recipient, received in good faith by recipient from a third party lawfully in possession of the information and having the right to disclose it on a non-confidential basis.

## **2. Privacy:**

Checkmate is committed to respecting your privacy. We will always collect, store, use and disclose your personal information in accordance with the Privacy Act 1993. However, we have also put in place a privacy policy that sets out the parties' obligations in respect of personal information, to protect your personal information when you submit, or we collect, that information – including via the website. You should read that policy at [www.checkmatenz.co.nz](http://www.checkmatenz.co.nz) as it is an important component of this agreement and, by entering into this agreement, you will be taken to have read, understood and accepted that policy.

## **5. Intellectual Property**

### **1. General:**

Title to, and all intellectual property rights in the services, the website and any documentation relating to the services remain the property of Checkmate (or its licensors).

### **2. Ownership of Data:**

As between the parties hereto, title to, and all intellectual property rights in the data, remain your property. However, your access to the data is contingent on full payment of the access fee when due. You grant Checkmate a licence to use, copy, transmit, store, and back-up your information and data for the purposes of enabling you to access and use the services and for any other purpose related to provision of services to you.

If access to the service is suspended due to non-payment or cancellation, the data will be retained for 6 months from the date of suspension/cancellation. You will be able to access the service for the purposes of payment and reactivation of your Subscription during that 6 month period, after which, the data will be permanently deleted without further notice or liability to you.

### **3. Backup of Data:**

We recommend that you maintain copies of all data (including audit documents and procedures) uploaded to the Service. Checkmate adheres to its policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any representation or guarantee that there will be no loss of data. You acknowledge and agree that any collection and compilation of data entails likelihood of some human and machine errors, omissions, delays, interruptions and losses, including inadvertent loss of data or damage to media, which may give rise to loss or damage. Checkmate expressly excludes liability for any such loss or damage, no matter how caused.

## **6. Warranties and Acknowledgements**

### **1. Authority:**

You warrant that where you have registered to use the service on behalf of another person, you have the authority to agree to the terms and conditions of this agreement on behalf of that person and agree that by registering to use the service you bind each invited user to the performance of any and all obligations that you (or they) become subject to by virtue of this agreement, without limiting your own personal obligations under this agreement.

## **2. Acknowledgement:**

You acknowledge that:

1. You are authorised to use the Services and the Website and to access the information and data that you input into the website, including any information or data input into the website by any person you have authorised to use the service. You are also authorised to access the processed information and data that is made available to you through your use of the website and the services (whether that information and data is your own or that of anyone else).
2. Checkmate has no responsibility to any person other than you and nothing in this agreement confers, or purports to confer, a benefit on any person other than you. If you use the services or access the website or app on behalf of or for the benefit of anyone other than yourself you agree that:
  1. You are responsible for ensuring that you have the right to do so;
  2. You are responsible for authorising any person who is given access to information or data, and you agree that Checkmate has no obligation to provide any person access to such information or data without your authorisation and may refer any requests for information to you to address; and
  3. You will indemnify Checkmate against any claims or loss relating to:
    1. Checkmate's refusal to provide any person access to your information or data in accordance with this Agreement,
    2. Checkmate's making available information or data to any person where Checkmate believes on reasonable grounds that it is entitled to do so.
    3. Other than as expressly stated in this agreement, the provision of, access to, and use of, the services is on an "as is " basis and at your own risk.
  4. Checkmate does not warrant that the use of the service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the service, including cellular services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. Checkmate is not in any way responsible for any such interference or prevention of your access or use of the services.
  5. The service is an application, and use of the application does not constitute compliance for any government acts and legislation.
  6. It is your sole responsibility to determine that the Services meet the needs of your business and are suitable for the purposes for which they are used.
  7. You remain solely responsible for complying with all applicable employment, health & safety and other laws.
  8. It is your responsibility to check that storage of and access to your data via the service and the website will comply with laws applicable to you (including any laws requiring you to retain records).

### **3. No warranties:**

Checkmate gives no warranty about the services. Without limiting the foregoing, Checkmate does not warrant that the services will meet your requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

### **4. Consumer guarantees:**

You warrant and represent that you are acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the services, the website or this agreement.

## **7. Limitation of Liability**

1. To the maximum extent permitted by law, Checkmate excludes all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the service or website.
2. To the extent that Checkmate is found to be liable to you, Checkmate's total aggregate liability in respect of any one incident, or series of connected incidents, is limited to an amount equal to the access fees paid by you in the 12 month period immediately preceding the event giving rise to Checkmate's liability.
3. If you are not satisfied with the service, your sole and exclusive remedy is to terminate this agreement.

## **8. Termination**

### **1. Prepaid Subscriptions**

Checkmate will not provide any refund for subscription period remaining under any prepaid access fee or for any tags or devices purchased.

### **2. No-fault termination:**

This Agreement will continue for the period covered by the access fee paid or payable under clause 3.1. At the end of each billing period this agreement will automatically continue for another period of the same duration as that period, provided You continue to pay the prescribed access fee when due, unless either party terminates this Agreement by giving notice to the other party at least 14 days before the end of the relevant payment period. If you terminate this agreement you shall be liable to pay all relevant access fees on a pro-rata basis for each day of the then current period up to and including the day of termination of this agreement.

### **3. Breach:**

If You:

1. breach this agreement (including, without limitation, by non-payment of any Access Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
2. breach this agreement and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of access fees that are more than 14 days overdue); or
3. You or your business become insolvent or your business goes into liquidation or has a receiver or manager appointed of any of its assets or if you become insolvent, or make any arrangement with your creditors, or become subject to any similar insolvency event in any jurisdiction,

Checkmate may take any or all of the following actions, at its sole discretion:

4. Terminate this agreement and your use of the services and the website and app with immediate effect;
5. Suspend for any definite or indefinite period of time, your use of the services and the website.

For the avoidance of doubt, if payment of any invoice for access fees due in relation to any of your subscription is not made in full by the relevant due date, Checkmate may: suspend or terminate your use of the service, the authority for all or any of Checkmate to use the service, or your rights of access to all or any data.

#### **4. Accrued Rights:**

Termination of this agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this agreement you will:

1. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
2. immediately cease to use the services and the website.

#### **5. Expiry or termination:**

Clauses 3.1, 3.7, 4, 5, 6, 7, 8 and 10 survive the expiry or termination of this Agreement.

### **9. Help Desk**

#### **1. Technical Problems:**

In the case of technical problems you must make all reasonable efforts to investigate and diagnose problems before contacting Checkmate. If you still need technical help, please email us at [contact@checkmate.co.nz](mailto:contact@checkmate.co.nz)

#### **2. Service availability:**

Whilst Checkmate intends that the services should be available 24 hours a day, seven days a week, it is possible that on occasions the services or website may be unavailable to permit maintenance or other development activity to take place.

If for any reason Checkmate has to interrupt the services for longer periods than Checkmate would normally expect, Checkmate will use reasonable endeavours to publish in advance details of such

activity on the website and or notify you by email to the email address you provided when setting up your access to the Service.

## **10. General**

### **1. Entire agreement:**

This agreement supersedes and extinguishes all prior agreements, representations (whether oral or written), and understandings and constitutes the entire agreement between you and Checkmate relating to the services and the other matters dealt with in this agreement.

### **2. Waiver:**

If either party waives any breach of this agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

### **3. Delays:**

Neither party will be liable for any delay or failure in performance of its obligations under this agreement if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

### **4. No Assignment:**

You may not assign or transfer any rights to any other person without Checkmate's prior written consent.

### **5. Severability:**

If any part or provision of this agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this agreement will be binding on the parties.

### **6. Notices:**

Except as otherwise stated in this agreement, any notice given under this agreement by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to Checkmate must be sent to [contact@checkmatenz.co.nz](mailto:contact@checkmatenz.co.nz) or to any other email address notified by email to you by Checkmate. Such notices to you will be sent to the email address which you provided when setting up your access to the service.

### **7. Rights of third parties:**

A person who is not a party to this agreement has no right to benefit under or to enforce any provision of this agreement.

### **8. Further assurances:**

Each party agrees, at its own expense, on the request of the other party, to do everything (including but not limited to the execution of documents) reasonably necessary to give full effect to this agreement and the transactions contemplated by it.