

APPLICATION SERVICES AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY. BY ACCESSING OR USING ALL OR ANY PORTION OF THE SERVICE, OR BY PAYING FOR THE SERVICE BY ANY MEANS OFFERED BY PULSECHECKHR, YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE IN THE SAME MANNER AS ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU.

IF YOU DO NOT AGREE, DO NOT USE THE SERVICE.

THE TERMS AND CONDITIONS OF THIS AGREEMENT ("**TERMS & CONDITIONS**") APPLY TO ANY AND ALL USES OF THE SERVICE BY YOU, WHETHER YOU ARE USING THE SERVICE PURSUANT TO ANY DEMO PERIOD, OR THE TERM OF THIS AGREEMENT AND YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS REGARDLESS OF THE TYPE OF USE OF THE SERVICE BY YOU.

This agreement, as amended from time to time (the "**Agreement**") is between you ("**you**", "**your**", "**Client**") and PulsecheckHR Ltd, including its authorised agents ("**PulsecheckHR**"). The Service and other capitalised terms used in this Agreement are defined in a Section at the end of this Agreement.

1. Hosted Service

PulsecheckHR will provide Client and its authorised Users access to the Service during the Term, subject to the terms and conditions of this Agreement. Subject to Client's compliance with its obligations under this Agreement, PulsecheckHR hereby grants Client a non-exclusive license to:

- a) access and execute the Software on PulsecheckHR's application server over the Internet,
- b) use the Documentation related to the Software or the other components of the Service;
- c) transmit data related to Client's use of the Software to and from PulsecheckHR's application server over the Internet and store such data on PulsecheckHR's application server; and
- d) access and use PulsecheckHR's User interface on its website.

2. Use and Access

- a) Subject to the restrictions on use as set forth herein, Client will have access to the Service for its intended purpose and in accordance with the specifications set forth in any Documentation relating to the Service or Software provided by PulsecheckHR. Such use and access will be continuous on a 24/7 basis except for interruptions by reason of maintenance or downtime beyond PulsecheckHR's reasonable control.

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- b) Client will use the Service only for its internal business operations and will not permit the Service to be used by or for the benefit of anyone other than Client. Client will not have the right to re-license or sell rights to access and/or use the Service to transfer or assign rights to access or use the Service, except as expressly provided herein. Client may not modify, translate, reverse engineer, decompile or create derivative works based upon the Software. Client agrees to use the Service in a manner that complies with all applicable laws including local employment, intellectual property and copyright laws. PulsecheckHR expressly reserves all rights not expressly granted to Client herein.
- c) Client will not:
- i. transmit or share identification or password codes to persons other than authorised Users;
 - ii. permit the identification or password codes to be cached in proxy servers and accessed by individuals who are not authorised Users; or
 - iii. permit access to the Service through a single identification or password code being made available to multiple users on a network.
- d) Client may not access the Service if it is a direct competitor of PulsecheckHR Ltd, except with PulsecheckHR's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.
- e) Client will be responsible for all equipment and software required for Client to access the Internet including, without limitation, a web browser compatible with the PulsecheckHR Service.
- f) Client agrees that its use of the Service will be in a manner consistent with this Agreement and with all applicable laws and regulations, including, without limitation, all employment, human rights, copyright, trademark, patent, trade secret and export control laws, as well as those laws prohibiting the use of telecommunications facilities to transmit illegal, obscene, threatening, harassing, or other offensive messages. Client acknowledges that PulsecheckHR is not responsible for any use or misuse of the Service by Client or its employees or contractors, or for any content created by Client's employees through the use of the Service or for any actions taken by Client in response to or associated with the use of the Service or its underlying methods and processes. In particular, Client will not, nor shall it permit or assist others to, abuse or fraudulently use the Service, by carrying out actions including, but not limited to:

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- i. obtaining or attempting to obtain the Service by any unauthorised means or device with intent to avoid payments;
- ii. accessing, altering, or destroying any information belonging to any person other than Client, or attempting to do so;
- iii. using the Service to interfere with the use of similar Service by other companies or users.

3. Price and Payment

- a) Client shall pay all fees or charges to PulsecheckHR's account in accordance with the Order Form and any subsequent amendments, incorporated into this agreement as Exhibit A. The charges specified on the Order Form will be equal to the total number of Users times the User Fee in effect. Payments will be made in advance and may be made annually, quarterly or monthly as specified on the Order Form. All payment obligations are non-cancellable and all amounts paid are non-refundable. You are responsible for paying all User Fees for Users ordered for the entire Term, whether or not such Users actually use the Service. You must provide PulsecheckHR with approved purchase order information as a condition of getting access to the Service. You may add Users by paying incremental User Fees. Added Users will be subject to the following:
 - i. the term of use for such Users will be coterminous with the pre-existing Term;
 - ii. the fee for the added Users will be the then current, generally applicable User Fee; and
 - iii. Users added in the middle of a billing period will be charged in full for that billing period. PulsecheckHR reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. Fees for other services will be charged on an as-quoted basis. All pricing terms are confidential and you agree not to disclose them to any third party.
- b) You agree to provide PulsecheckHR with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of a Service Administrator who will be responsible for and authorised to make all decisions concerning the Service on your behalf including act as a billing contact. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, PulsecheckHR reserves the right to terminate your access to the Service in addition to any other legal remedies.

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- c) If you believe your bill is incorrect, you must contact us in writing within 30 days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.
- d) PulsecheckHR's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on PulsecheckHR's income. If PulsecheckHR is required to pay or collect any value-added tax on any fees charged under this Agreement, or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on PulsecheckHR's net income, then such taxes and/or duties will be billed to and paid by Client immediately upon receipt of PulsecheckHR's invoice and supporting documentation for the taxes or duties charged.

4. Technical Support

Technical support is described in detail on the attached Exhibit B (Service Level Agreement).

5. Term and Termination

- a) The term of this Agreement will commence the day the web site interface for the Service is accessible to you via the Internet, and will continue for a period of one year, quarter or month, as selected by the Client or for such other initial term as otherwise mutually agreed upon (the "Term") and specified on the Order Form. Thereafter this Agreement will automatically renew for successive periods of the same duration as the initial Term ("**Renewal Term**") unless either party gives the other party not fewer than thirty (30) days notice of its intent not to renew, or unless terminated earlier under the terms contained within this Agreement.
- b) Either party may terminate this Agreement for material breach by the other party, provided, however, that the terminating party has given the other party at least twenty-one (21) days written notice of and the opportunity to cure the breach. Termination for breach will not preclude the terminating party from exercising any other remedies for breach available to it under law.

6. Ownership of Intellectual Property

Title to any proprietary rights in the Service components including, without limitation, the Software, PulsecheckHR's web site and user interface will remain in and be the sole and exclusive property of PulsecheckHR. Client will be the owner of all data or information created by Client and stored on PulsecheckHR's application servers.

7. Confidentiality and Privacy

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- a) Client acknowledges that the Software, other Service components and other data and software on PulsecheckHR's application server embodies logic, design and coding methodology that constitute valuable confidential information that is proprietary to PulsecheckHR. Client will safeguard the right to access the Service, the Software and other software installed on PulsecheckHR's application server using the same standard of care that Client uses for its own confidential materials but at least a reasonable standard of care.
- b) All data or information pertaining to Client and transmitted to or from or stored on PulsecheckHR's application server in connection with the performance of this Agreement will be held as confidential by PulsecheckHR and will not, without the prior written consent of Client, be disclosed or be used for any purposes other than the performance of this Agreement. PulsecheckHR will safeguard the confidentiality of such data or information using the same standard of care that PulsecheckHR uses for its own confidential materials but at least a reasonable standard of care. This obligation does not apply to data or information that:
- i. is or becomes, through no act or failure to act on the part of PulsecheckHR, generally known or available to the public;
 - ii. is known by PulsecheckHR at the time of receiving such information as evidenced by its written records;
 - iii. is hereafter furnished to PulsecheckHR by a third party, as a matter of right and without restriction on disclosure;
 - iv. is independently developed by PulsecheckHR as evidenced by its written and dated records and without any breach of this Agreement; or
 - v. is the subject of a written permission to disclose provided by Client.
- c) Further notwithstanding the forgoing, disclosure of data or information will not be precluded if such disclosure:
- i. is in response to a valid order of a court or other governmental body of the United Kingdom;
 - ii. is otherwise required by law; or
 - iii. is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

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- d) Personal Information will be collected, used, retained and disclosed by PulsecheckHR as outlined in PulsecheckHR's Privacy Policy. Client will not do, or omit to do, anything in breach of, or contrary to the provisions of the Privacy Policy, as amended by PulsecheckHR from time to time. Use of the Service or any component thereof will constitute electronic acceptance of the Privacy Policy as amended as of the time of such use. Any enquiries related to the Privacy Policy should be directed to PulsecheckHR. Client warrants and represents that Client is in compliance, and will fully comply, with all applicable Privacy Laws and will take all steps reasonably within Client's power to ensure that Client's employees, contractors or customers comply with all applicable Privacy Laws.

8. Warranty and Disclaimer

PulsecheckHR warrants the Service will be provided in conformity with generally prevailing industry standards. Client must report any material deficiencies in the Service to PulsecheckHR in writing within thirty (30) days of Client's discovery of the defect. Client's exclusive remedy for the breach of the above warranty will be for PulsecheckHR to use commercially reasonable efforts to provide the Service in accordance with this Agreement. If the breach involves the Software, Client's exclusive remedy will be for PulsecheckHR to provide access to replacement software, for the Software that is materially deficient, within a commercially reasonable time. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. PULSECHECKHR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES.

PULSECHECKHR MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY COMPONENT. PULSECHECKHR DOES NOT REPRESENT OR WARRANT THAT:

- A. THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SERVICE, SYSTEM OR DATA
- B. THE PROCESS AND PROCEDURES SUPPORTED BY THE SERVICE MAY BE USED TO DIRECTLY SUPPORT THE CLIENT'S OTHER HR RELATED PROCESSES

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- C. THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS
- D. ANY STORED DATA WILL BE ACCURATE OR RELIABLE
- E. THE QUALITY OF ANY INFORMATION OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS
- F. ERRORS OR DEFECTS WILL BE CORRECTED, OR
- G. THE SERVICE OR THE COMMUNICATION FACILITIES, INCLUDING, WITHOUT LIMITATION, THE INTERNET, THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR ARE SECURE FROM INTERRUPTION, INTERCEPTION OR CORRUPTION BY THIRD PARTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8, THE SERVICE IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS.

9. Limitation of Liability, Indemnification

Neither party will be liable to the other for special, indirect or consequential damages incurred or suffered by the other arising as a result of or related to the use of the Service, whether in contract, tort or otherwise, even if the other has been advised of the possibility of such loss or damages. Client will be liable for and, in addition, indemnify and hold PulsecheckHR harmless against any claims, actions, losses, liabilities, expenses (including, without limitation, all reasonable legal costs and expenses) incurred by PulsecheckHR arising out of or in conjunction with Client's breach of this Agreement or use of the Service. PulsecheckHR's total liability under this Agreement with respect to the Service, regardless of cause or theory of recovery, will not exceed the total amount of fees paid by Client to PulsecheckHR during the twelve month period immediately preceding the occurrence or act or omission giving rise to the claim.

10. Employment Law Indemnity

It is Client's obligation to ensure that it complies with all the prevailing terms and conditions of employment of its staff at all times including any equal opportunities or discrimination legislation. Nothing written, said, done or communicated in any manner by PulsecheckHR, or its employees or agents, shall in any way alter or affect this absolute obligation. Client will indemnify and hold harmless PulsecheckHR and its employees and agents, from any and all actions, losses, liabilities, expenses (including, without limitation, all reasonable legal costs and expenses) arising out of Client's use of the Service, and any associated processes and procedures, with respect to Client's obligations under the direct employment, equal opportunity, discrimination and any overarching human rights legislation that governs or applies to Client's responsibilities as an employer.

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11. Relation of Parties

Nothing in this Agreement will create or imply an agency relationship between the parties, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

12. Non-assignment

Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party, nor will such consent be unreasonably withheld, except that PulsecheckHR may assign this Agreement, without consent, in connection with a sale of all or substantially all of PulsecheckHR's business. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

13. Governing Law

This contract shall be governed by and interpreted in accordance with English law. Both parties agree that only the English courts shall have jurisdiction in relation to any claim or matter arising under or in connection with this contract or the legal relationship established by this contract and further that they shall not be entitled to change the decision giving jurisdiction to the English courts.

14. Legal Fees

If any legal action or arbitration is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable legal fees and costs.

15. Severability

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

16. Force Majeure

Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control. Lack of funds does not entitle a party to claim force majeure.

17. Waiver and Modification

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This

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Agreement may be modified only by a written instrument executed by authorised representatives of the parties hereto.

18. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

19. Amendments

PulsecheckHR may amend this Agreement by giving you 30 days notice of the proposed amendments, which notice may be provided by e-mail. PulsecheckHR may periodically amend this Agreement, as contemplated above, for any purpose including, without limitation, changing fees or charges for use of the Service or restricting the amount of data you can store on the Service or to implement a charge for data storage or for data storage in excess of certain amounts.

20. Definition

The words and phrases used in this Agreement, the initial letters of which are capitalised have the following meanings:

- a) "**Documentation**" means all documents or information in any form pertaining to PulsecheckHR's Software, website or user website interface or other components of the Service and provided to or developed by Client from time to time;
- b) "**Downtime Credit**" has the meaning specified in Exhibit B
- c) "**Order Form**" means an order for the Service, executed by Client and thus incorporated into this agreement under Exhibit A.
- d) "**Personal Information**" means any information about an identifiable individual but does not include aggregate or anonymous information, or information used only to contact an individual in their capacity or position as an employee or official of an organisation;
- e) "**Privacy Laws**" means any statute, legislation, regulation, or ruling, directive or order, of any government, legislature, parliament, regulatory authority, governmental department, agency, commission, board, tribunal, crown corporation, or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of any nation, or province or state or other

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- subdivision thereof, or any municipality, district or other subdivision thereof, with respect to individual privacy and/or access to Personal Information, and with respect to the collection, use or disclosure of Personal Information, and having or purporting to have jurisdiction over any person, including Client or any User;
- f) "**Renewal Term**" has the meaning specified in Section 5
 - g) "**Service**" means the right to access and use PulsecheckHR's Software, website, user website interface and related Documentation;
 - h) "**Software**" means Pulsecheck or other software as agreed by Client and PulsecheckHR, as Client may order and pay for from time to time or as may be modified from time to time by PulsecheckHR;
 - i) "**Term**" has the meaning specified in Section 5 or any Renewal Term;
 - j) "**Unit**" has the meaning specified in Exhibit B
 - k) "**User**" means Client's individual employee or contractor for whom Client has:
 - i. paid the required fee under this Agreement;
 - ii. given or authorised a password to be given to such individual entitling them to access and use the Service; or
 - iii. for whom Client is responsible to ensure that such individual observes the obligations of Client under this Agreement.
 - l) "**User Fee**" means PulsecheckHR's then current fee for one of Client's Users to access and use the Service for the then current Term.

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EXHIBIT A – SERVICES ORDER FORM

This exhibit incorporates any and all Order Forms executed by Client into the body of this Agreement. Where any terms and conditions stated on a specific order form differ from terms in this Agreement, the Order Form terms shall prevail only the Service specified on that Order Form.

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EXHIBIT B - SERVICE LEVEL AGREEMENT

This Service Level Agreement ("**Agreement**") sets forth the details regarding the level of service and technical support for the Service that apply when your account is in good financial standing.

1. Downtime

- a) For purposes of this Agreement, a unit of Downtime is one period of at least 30 minutes ("**Unit**") during which the Service or a material component of it is unavailable because of problems with or the unscheduled maintenance of our hardware or system software ("**Downtime**"). Downtime does not include
 - i. problems caused by factors outside of our reasonable control,
 - ii. problems resulting from any actions or inactions by you or any third party,
 - iii. problems resulting from your equipment and/or third party equipment not within our sole control, or
 - iv. network unavailability during scheduled maintenance of our network and/or servers. PulsecheckHR will periodically monitor PulsecheckHR network and server availability using software and hardware components capable of measuring application traffic and responses. Based on its monitoring, PulsecheckHR will determine Downtime for the purposes of this Agreement.
- b) Our servers connect to the Internet through redundant high-speed connections on diverse backbones, enabling data delivery to the end user in a quick and efficient manner. Subject to the limitations set out below, in any calendar month, we guarantee that Downtime will not exceed 8 Units of Downtime excluding, however, regularly scheduled maintenance. Any regularly scheduled maintenance will be performed during the hours of 11:00 PM and 5:00 AM GMT on a Saturday or Sunday. We work to ensure the functioning of all network infrastructure through continuous monitoring by our staff, however, we have no control over third party services including, without limitation, the Internet and PULSECHECKHR'S SERVICES ARE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PULSECHECKHR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

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- c) If Downtime exceeds 8 Units of Downtime in any calendar month, PulsecheckHR will, upon your written request, credit your account (a "**Downtime Credit**") in an amount equal to the pro-rata price for one (1) day of service, for each 4 Units of Downtime in excess of 8 Units in any calendar month.
- d) To receive Downtime Credit, you must request such credit by sending an email to credit@Pulsecheckhr.com within seven (7) days after the occurrence of Downtime. The aggregate maximum number of Downtime Credits to be issued for any and all instances of Downtime occurring in a single calendar month will not exceed seven (7). Downtime Credits will be applied upon issue of the first invoice following the request for Downtime Credit, unless the Downtime occurs in your final month of service. In such case, a refund for the dollar value of the Downtime Credit will be mailed to you within thirty (30) days of the expiration of your service agreement.

2. Technical Support

- a) A member of our technical support help desk staff will be available to assist you with problems and questions regarding the Service. Technical support hours are between 8:30 AM and 5:30 PM GMT (or daylight saving time when applicable) from Monday to Friday only.

You may contact our technical support help desk via email at support@Pulsecheckhr.com, or by telephone at +44 20 8545 2680. We may, from time to time, develop additional methods for you to contact the help desk, and will make information regarding such methods available at our website.

3. Software Upgrades

From time to time PulsecheckHR will release new versions of the Software and will automatically upgrade the Software to the latest version, upon 7 days notice to you.