**End User Agreement**

Pursuant to the attached Terms and Conditions of Sale, Service Provider shall provide the Test Kits and related Services as set forth below. Submitted Order Volumes may not be canceled.

**Terms and Conditions of Sale**

# General.

## These terms and conditions  (these "Terms") comprise the entire agreement between the parties regarding the sale of the Goods and Services by LetGetChecked, Inc. ("Service Provider") to the Client named below ("Client").

# Definitions.

## “**Confidential Information**” means information that is proprietary or confidential and is either identified as such by the Party disclosing such information (the “**Disclosing Party**”), or which reasonably ought to be regarded as confidential based on the nature of such information, including but not limited to financial, business, or technical data, know-how, business methods, and all other information (in any form or medium, e.g., electronic or print) that have been disclosed to or otherwise obtained by the other Party (the “**Receiving Party**”). Confidential Information shall not include information that: (i) is or becomes publicly known through no act or omission of, or breach of this Agreement by, the Receiving Party; (ii) was in the Receiving Party’s lawful possession prior to disclosure by the Disclosing Party; (iii) is lawfully disclosed to the Receiving Party by a third party; or (iv) is independently developed by the Receiving Party without use of or reference to the Confidential Information, and such development may be shown by record.

## **"Intellectual Property"** means all intellectual and intangible rights of any kind existing anywhere in the world, now or in the future, whether registered or not, including but not limited to any patents, patent applications, trademarks, trademark registrations, trade names, service marks, service mark registrations, inventions, discoveries, designs, formulas, know-how, processes, business methods, copyrights, trade secrets, concepts and ideas (whether or not patentable or copyrightable), computer programs and software, technological innovations, creations, writings, illustrations, images, and all changes, modifications, and improvements to the above.

## “**Participant**” means a person located in the United States receiving services from Client that Client identifies as eligible to receive the Services.

## "**Goods**" means the Test Kit that Service Provider provides to Client pursuant to the screening questions and this Agreement.

## “**Participant Portal**” means the LetsGetChecked-branded web portal where by Participants may track the status of the Test Kit and the Results.

##  “**Test Kit**” means the Standard 5 Test Kit.

## “**Services**” means the services provided by Service Provider, including clinician ordering and review of tests, processing of Test Kit samples by the Lab, the return of results to the Participant, and calls from Service Provider’s nursing team to Participants with positive or inconclusive results.

##  “**Taxes**” collectively means all applicable taxes, duties, levies, tariffs, and other governmental charges.

# INTELLECTUAL PROPERTY

## **Service Provider Ownership**. Service Provider is the sole and exclusive owner of all right, title, and interest in and to the Services and Goods including all Intellectual Property rights included and/or related thereto, and all improvements, changes, modifications, or enhancements thereto (collectively, “Service Provider IP”).

## Service Provider grants Client a non-exclusive, non-transferable license to access and use the Client Portal and to make the Products and Services available to Participants and for no other purpose. For purposes of clarity, this Agreement does not provide Customer the right to otherwise (i) sub-license or distribute Service Providers Products or Services or (ii) reproduce, adapt, modify, or create derivative works of the Products, Services or Documentation. For the term of this Agreement, Service Provider shall grant Client access and administrative rights to a dashboard (called “Client Portal”) to include analytics and aggregated data on how the program is performing. Client shall be responsible for limiting or controlling access to the Client Portal to users authorized by Client.

# SERVICES

# (a) Data Exchange. Service Provider will provide Client access to a Client Portal to access Participant Test Results and reporting.

# (b) Service Provider Clinician Authorization. Service Provider will engage an appropriately credentialed clinician to provide review and enter a Clinician Order as appropriate.

# (c) Sample Processing: Upon receipt of the Test Kit, the sample will be processed by a Lab and Results returned to Service Provider via secure connection. In the event that the Participant has not collected a sufficient sample for processing this information will be included on the Participant’s Portal and in the reporting to Client. In the event of an inadequate Sample or other error, Service Provider will arrange for re-testing of the Participant at the standard rates.

# (d) Service Provider Clinician Review. Service Provider’s appropriately credentialed clinician will review the Results, adding clinical notes if required prior to releasing the Results to the Participant.

# (e) Participant Results. Upon completion of the clinician’s review, Service Provider will send the Results to the Participant’s online account. If Service Provider has been provided with Participant’s email, upon sending the Results, Service Provider will send an email confirming availability of Results in the Participant Portal. LGC’s Customer Care Team will call the Participants with abnormal and inconclusive Results.

# (f) Test Results. Service Provider will send the Participant Results to the Client Portal.

# (g) Reporting. Service Provider will provide Client its standard reporting package.

# CLIENT RESPONSIBILITIES

## **Use of Goods and Services**. Client will use the Goods and Services in accordance with the terms set forth herein and applicable laws and regulations. For purposes of clarity, this Agreement does not provide Client the right to (i) resell the Goods or Services; or (ii) reproduce, adapt, modify, or create derivative works of the Goods or Services.

## **Participant Testing.** Client shall be solely responsible for ensuring (i) that each Participant voluntarily consents to being tested, the sharing of their personal information with Service Provider, and, as applicable, the reporting of results to be in accordance with the provisions of this Agreement; (ii) the Participant registers the Test Kit, (iii) the collection and return of the sample to the Lab, and, if applicable to the Services, (iv) Client’s proper use and protection of the Participant’s results pursuant to applicable law.

## **Reliance on Information.** In performing Services, Service Provider may rely, without further diligence, inquiry or investigation, on the Participant information and other written or oral information provided by Client or Participants. Service Provider will not be liable or responsible for any errors or omissions contained in information provided (collectively, “Client Errors”).

# FEES, PAYMENTS AND TAXES

## **Invoices**. Service Provider will invoice NCSD for Test Kits utilized by Client. In the event that Client’s NCSD account does not include sufficient funds, Service Provider may invoice Client directly. No returns are permitted in the event that Client has unused Test Kits. Test Kits must be utilized within the Test Kit expiration timeframe.

## **Fees and Payment**. Client will remit payment to Service Provider prior to Test Kit shipment via the link set forth in the invoice.

## **Taxes**. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Client. Client shall be responsible for all such charges, costs and taxes; provided, that, Client shall not be responsible for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personal or real property, or other assets.

# COMPLIANCE WITH LAWS

## **Local Laws**. Both Parties shall comply with all applicable laws, regulations and other legal requirements in connection with the Services

## **Personally Identifiable Information.** Each Party shall comply with applicable law addressing the privacy and security of personal information including, without limitation, information that identifies an individual and that is subject to applicable law regarding the privacy or security of such information. The Parties agree and acknowledge that any exchange of individually identifiable health information relating to this Agreement shall be for treatment or other purposes permitted by the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act (“HIPAA”), and each Party agrees to abide by such provisions of HIPAA as are applicable to it.

# WARRANTIES; DISCLAIMER

## **Warranties by Service Provider.**  Service Provider shall perform Services or cause Services to be performed in a professional, workmanlike manner and at a quality consistent, in all material respects, as described in this Agreement. Client acknowledges that it has determined the type, nature and scope of the Services it has requested, and Service Provider makes no representation or warranty with respect to the choice of such Services selected by Client for any purpose.

## **Warranties by Client**. Client represents and warrants that it (i) will secure all third-party consents as necessary for Service Provider to deliver the Goods and Services in compliance with all applicable laws; (ii) will not make any representations, warranties, or guarantees on behalf of Service Provider concerning the Services or Goods or any features, performance, or functionality of the Services or Goods; and (iii) will not resell the Goods.

##  **DISCLAIMER OF WARRANTY**. THE EXPRESS WARRANTIES IN THIS SECTION 7 STATE SERVICE PROVIDER’S SOLE AND EXCLUSIVE WARRANTIES TO CLIENT CONCERNING THE SERVICES AND GOODS HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7 AND TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE SERVICES AND GOODS ARE PROVIDED STRICTLY “AS-IS,” “AS-AVAILABLE,” AND “WITH ALL FAULTS” AND SERVICE PROVIDER MAKES NO ADDITIONAL WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY AS TO THE SERVICES, GOODS, OR ANY OTHER MATTER WHATSOEVER. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, SERVICE PROVIDER DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, OR A PARTICULAR OR BUSINESS RESULT, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, SERVICE PROVIDER MAKES NO WARRANTY THAT THE GOODS OR SERVICES WILL: (I) MEET CLIENT’S REQUIREMENTS OR INTENDED PURPOSES OR USES; (II) PREVENT THE SPREAD OR INCURRENCE OF ANY ILLNESS, VIRUS, OR BACTERIA; (III) BE FREE FROM DEFECTS, WHETHER PATENT OR LATENT, IN DESIGN, MATERIALS OR WORKMANSHIP; AND (IV) BE FREE OF ANY LATEX, POLYVINYL CHLORIDE (PVC), DI-ETHYLHEXYL PHTHALATE (DEHP), HALOGENATED ORGANICS, PERSISTENT BIOACCUMULATIVE TOXIN (PBTS), OR CARCINOGENS AND REPRODUCTIVE TOXIN FREE (CA PROP 65). CLIENT ASSUMES TOTAL RESPONSIBILITY FOR THE SELECTION, USE, MISUSE, AND ALTERATIONS OF THE GOODS. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, CLIENT’S SOLE AND EXCLUSIVE REMEDY FOR SERVICE PROVIDER’S BREACH OF ANY WARRANTY WILL BE THE REPAIR, REPLACEMENT, OR RE-PERFORMANCE BY SERVICE PROVIDER OF THE NONCONFORMING GOOD OR SERVICE.

FOR THOSE TEST KITS UTILIZING DRIED BLOOD, THE DRIED BLOOD BIOMETRICS TESTS WERE DEVELOPED AND VALIDATED BY LETSGETCHECKED LABS FOR GENERAL HEALTH SCREENING PURPOSES PURSUANT TO CLIA REGULATIONS. A DRIED BLOOD SPOT TEST RESULT IS AN ESTIMATION OF THE RESULT THAT AN INDIVIDUAL WOULD RECEIVE FROM A VENIPUNCTURE SERUM ANALYSIS AND, ALTHOUGH THESE HAVE BEEN PROVEN TO HAVE A HIGH CORRELATION WITH TRADITIONAL VENIPUNCTURE SERUM ANALYSIS THE DRIED BLOOD SPOT TEST CAN ALSO BE AFFECTED BY THE VOLUME OF SAMPLE THAT IS COLLECTED ONTO THE ADX CARD. ACCORDINGLY, DRIED BLOOD SPOT TESTING SHOULD NOT BE USED AS A DIAGNOSIS, AND SHOULD NOT BE USED TO MAKE CLINICAL DECISIONS.

# LIMITATION OF LIABILITY

## **Limitation of Liability.** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW,SERVICE PROVIDER’S TOTAL CUMULATIVE LIABILITY UNDER, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO TWO TIMES THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS TO CLIENT) BY CLIENT TO SERVICE PROVIDER FOR THE SERVICES UNDER THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE.

## EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, BUSINESS OPPORTUNITY, OR DATA) OR SIMILAR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT HEREUNDER, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) EVEN IF SERVICE PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

# CONFIDENTIALITY AND NON-USE OBLIGATIONS

## **Protection of Confidential Information**. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Neither Party may use the other Party’s Confidential Information for any purpose other than (i) to perform its obligations or exercise its rights under this Agreement (ii) in the case of Client to evaluate Service Provider’s Goods and Services, or (iii) in the case of Service Provider, to improve and develop Service Provider’s products and services.

## **Survival**. Sections 2 (Definitions), 3 (Intellectual Property), 5 (Fees, Payments and Taxes), 7(c) (Disclaimer of Warranty), 8 (Limitation of Liability), 9 (Confidentiality and Non-Use Obligations), and 10 (Miscellaneous) will survive expiration or termination of this Agreement for any reason.

# MISCELLANEOUS

## **Assignments**. Client shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Service Provider. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Client of any of its obligations under this Agreement.

## **Publicity.** Neither Party will make any public announcement or press release regarding this Agreement or any activities performed hereunder without the prior written consent of the other Party.

## **Force Majeure**. Neither Party will be in breach of this Agreement nor liable for delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure results from events, circumstances, or causes beyond its reasonable control, including but not limited to: pandemic; epidemic; any global, national, or local public health emergency or disease outbreak (including, without limitation, COVID-19 (a/k/a the 2019 Novel Coronavirus) or any similar disease(s)); strike, lock-out or other industrial dispute; failure of a utility service or transport or telecommunications network; act of God; fires, floods, storms, earthquakes and explosions; war, riot, or other civil disturbance; malicious damage; compliance with any law or governmental order, rule, regulation, direction or act of any government in its sovereign capacity including quarantine and travel and shipping restrictions; default by suppliers, vendors, or sub-contractors; or difficulties in obtaining necessary labor, materials, manufacturing facilities, or transportation, regardless of (i) whether or not any of the foregoing were reasonably foreseeable or (ii) Service Provider’s performance becoming impossible or impractical such that this Section will take effect in either scenario (each, a “**Force Majeure Event**”).

(f) **Notices**. All notices, demands, consents, approvals and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Notices to Service Provider shall be sent to:

LetsGetChecked, Inc.

Attn: CFO

330 W 38th Street, 405,

New York, NY 10018,

## **Governing Law and Venue**. This Agreement will be governed by and construed in accordance with the laws of the State of New York without giving effect to principles of conflict of laws (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. Any legal action or proceeding relating to and any claim arising out of this Agreement shall exclusively be brought in State or Federal Court located in New York City, New York, USA. Client agrees that service of process may be made by reputable express courier service, such as UPS or Federal Express, for which receipt of delivery is received. Unless expressly provided otherwise in this Agreement Client may not bring any action against Service Provider more than one year after the date the claim accrued.

## **Severability**. If any provision of this Agreement is deemed to be or held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

## **Independent Contractors; No Third-Party Beneficiaries**. Client’s relationship to Service Provider is that of an independent contractor, and neither Party is an agent of the other. There are no third-party beneficiaries to this Agreement. For the avoidance of doubt, Participants are not beneficiaries of this Agreement.

## **Amendment**. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

**By signing below, Client acknowledges and agrees to be bound by the attached Terms and Conditions of Sale**

|  |
| --- |
| **[MEMBER NAME]** |
| By: |  |
|  | (Authorized Signature) |
| Name: |  |
|  | (Print or Type) |
| Title: |  |
| Date: |  |