COOLCARE TERMS AND CONDITIONS

TERMS AND CONDITIONS

1.INTERPRETATION

1.1 In this Agreement the following words and phrases will have the following meanings:

Term	Definition
"**Affiliate**"	each agent, employee, contractor or subcontractor of a party or a party's Group;
"**Agreement**"	the agreement comprising these Terms and Conditions and the relevant Initial Order;
"**Agreement Term**"	The Initial Term (if any) and any period thereafter until this Agreement is terminated in accordance with its terms;
"API Key"	the security key CoolCare makes available for the Customer to access the CoolCare API.
"API Licence"	The agreement between the Customer and CoolCare which governs use of, and access to the CoolCare API as provided at http://www.CoolCare.co.uk/guides and forming part of this Agreement.
"API User"	Any users authorised or enabled by the Customer to access the CoolCare API on behalf of the Customer via the API Key.
"**Applicable Law**"	means any law, statute, regulation, bylaw or subordinate legislation in force from time to time which a party is subject and/or in any jurisdiction which the party operates;
"**Appropriate Safeguards**"	means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Legislation from time to time;
"**Authorised Users**"	the Customer's employees, agents and contractors authorised to use the Licensed Software and the Services in accordance with this Agreement for the purposes of the Customer's business carried on at the Customer Location;
"**Business Day**"	any day which is not a Saturday, Sunday or public holiday in

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England;

"**Conditions**"	these terms and conditions, as amended from time to time;
"**Confidential Information"**	any proprietary information belonging to either party including technical information and data, trade secrets or know-how, past, present or future research information, product plans, products, services, markets, customer lists and customers, users or potential users of any such information created or used in the provision of the Services, developments, inventions, processes, formulae, technology, designs, drawings, and other business and finance information and any and all information derived or obtained from any such information, and any other information clearly designated as being confidential (whether or not it is marked as confidential) or which ought reasonably to be considered to be confidential or which is identified as Confidential Information in clause 15.5;
"CoolCare API"	The application programming interface and related Documentation CoolCare may make available to a Customer as part of the Services.
"**CoolCare Firmware**"	any Software which is provided (or made available) by CoolCare to the Customer from time to time which is loaded onto the Hardware, or otherwise interfaces with the Subscription Software, together with any incorporated Open-Source Software;
"Customer Application"	any applications or integration used or developed by, or on behalf of, the Customer to interact with the CoolCare API, or CoolCare's Software.
"**Customer Data**"	the data inputted or imported into the information fields of the Software by the Customer, Authorised Users, API Users, or CoolCare on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services;
"**Customer Location(s)**"	the location(s) at which the Licensed Software will be used, as notified to CoolCare from time to time;
"**Data Controller**"	has the meaning given to that term (or to the term 'controller') in Data Protection Legislation;
"**Data Processor**"	has the meaning given to that term (or to the term 'processor') in Data Protection Legislation;

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"**Data Protection Legislation**"	Means all applicable data protection legislation and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and the privacy of electronic communications.
"**Data Protection Losses**"	means all liabilities, including all: (a) costs (including legal costs), claims, demands, actions, settlements, interest charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and (b) to the extent permitted by Applicable Law; (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and (iii) the reasonable costs of compliance with investigations by a Supervisory Authority;
"**Data Subject**"	has the meaning given to that term in Data Protection Legislation;
"**Data Subject Request**"	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Legislation;
"**Documentation**"	the documentation made available to the Customer by CoolCare online via http://www.CoolCare.co.uk/ or such other web addresses notified by CoolCare to the Customer from time to time which sets out a description of the Subscription Services and the user instructions for the Licensed Software and CoolCare API;

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"**Effective Date**"	the date specified as such in the Initial Order;
"**Fees**"	the fees payable by the Customer to CoolCare for the Services and the Hardware from time to time;
"**Group**"	each and every entity that directly or indirectly controls, is controlled by, or is under common control with a party, for so long as such control exists. In the case of companies and corporations, control means beneficial ownership of more than 50% of the voting stock, shares, interest or equity in an entity; in the case of any other legal entity, "control" and "controlled" shall exist through the ability to directly or indirectly control the management and/or business of the legal entity;
"**Hardware**"	the hardware to be supplied to the Customer under this Agreement from time to time, whether provided as part of the Hardware Subscription Services or purchased by the Customer directly, as applicable;
"Hardware Refresh"	Has the meaning given in clause 8.11;
"Hardware Subscription Service"	The service provided in accordance with clause 8 and any agreed Hardware Subscription Payment Plan;
"**Initial Order**"	the details set out in Appendix 1 to the relevant order letter provided to the Customer by CoolCare, where applicable;
"**Initial Term**"	the period of time set out in the Initial Order, where applicable;
"**Intellectual Property Rights**"	patents, inventions, know-how, trade secrets and other confidential information, registered designs, copyrights, database rights, Internet domain names, design rights, rights affording equivalent protection to copyright, database rights and design rights, topography rights, trade marks, business names, trade names, moral rights, registration of or an application to register any of the aforesaid items, and rights in the nature of any of the aforesaid items in any country, rights in the nature of unfair competition rights and rights to sue for passing off;
"**Hardware Subscription Commencement Date**"	The commencement date set out in the Hardware Subscription Payment Plan;
"Hardware Subscription Payment Plan"	the payment plan for the Subscribed Hardware, as set out in the Initial Order, or otherwise agreed by the parties in writing;
"Hardware Subscription Period"	the Hardware Subscription period for the Subscribed Hardware, as set out in the Hardware Subscription Payment Plan;

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"**Licence Period**"	the period for which the Licensed Software is licensed to the Customer, as set out in the Initial Order (or if none, the term of this Agreement);
"**Licensed Software**"	the CoolCare Firmware and the Subscription Software;
"**Normal Business Hours**"	09.00 am to 17.00 pm local UK time, on each Business Day;
"**Number of Registered Beds**"	the maximum number of service users that the registered provider is allowed to accommodate at a given Customer Location as registered with The Care Quality Commission from time to time;
"**Open-Source Software**"	any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (http://www.opensource.org/docs/definition.php) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at http://www.gnu.org/licenses/gpl.html), or anything similar, included or used in, or in the development of the Licensed Software, or with which the Licensed Software is compiled or to which it is linked;
"**Personal Data**"	has the meaning given to that term in Data Protection Legislation;
"**Personal Data Breach**"	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data processed in connection with this Agreement;
"**Planned Maintenance**"	maintenance intended to resolve or prevent issues, improve performance, make enhancements or implement configuration changes, as notified to the Customer in advance;
"**Processing**"	has the meanings given to that term in Data Protection Legislation (and related terms such as 'process' have corresponding meanings);
"**Protected Data**"	means any Customer Data which is Personal Data received from or on behalf of the Customer in connection with CoolCare's obligations under this Agreement;
"**Services**"	the Subscription Services and the Training Services;
"**Site**"	the site address notified to the Customer by CoolCare at the time of setup or any other site from which the Service is made available to the Customer from time to time;
"**Software**"	any Licensed Software or Open-Source Software, depending on the context in which the term "Software" is used;

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"Software Subscription Services"	the making available by CoolCare to the Customer of access to the Subscription Software;
"**Sub-Processor**"	means another Data Processor engaged by CoolCare for carrying out processing activities in respect of the Protected Data on behalf of the Customer;
"Subscribed Hardware"	Hardware provided by CoolCare to the Customer as part of the Hardware Subscription Services in accordance with these Conditions, as set out in the Initial Order or Hardware Subscription Payment Plan, together with all substitutions, replacements or renewals of the same;
"Subscribed Hardware Risk Period"	the Hardware Subscription Period and any further term during which the Subscribed Hardware is in the possession, custody or control of the Customer;
"Subscription Services"	The Hardware Subscription Services and the Software Subscription Services;
"**Subscription Software**"	the computer programmes forming part of any Subscription Services provided by CoolCare under this Agreement, together with associated databases in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements to them made available to the Customer under this Agreement;
"**Supervisory Authority**"	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation;
"**Support Services Policy**"	CoolCare's policy for providing support in relation to the Services as made available at http://www.CoolCare.co.uk/ or such other website address as may be notified to the Customer from time to time;
"**Training Services**"	those training services detailed in the Initial Order; and
"UK GDPR"	has the meaning given to it in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;

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"**Virus**"

anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses time-bombs, keystroke loggers, spyware, adware and other similar things or devices.

1.2 The headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation or construction.

1.3 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, references to any gender shall include all other genders and references

to persons shall include natural persons, bodies corporate, unincorporated associations, governments, states, trusts and partnerships, in each case whether or not having a separate legal personality.

1.4 The words and phrases "including" and "in particular" shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible.

1.5 Any reference to "writing" or "written" includes faxes and email.

1.6 References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the same as amended by or as contained in any subsequent re-enactment, modification or statutory extension thereof.

1.7 References to a law includes all subordinate legislation made under that law.

1.8 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement. 1.9 References to this Agreement includes its schedules and appendices.

2. BASIS OF CONTRACT

2.1 Where an Initial Order is provided to the Customer by CoolCare, such Initial Order shall constitute an offer by CoolCare to supply Hardware and/or Services, as appropriate. Upon signature of the Initial Order by the Customer, an Agreement shall be formed.

2.2 Should any other correspondence from the Customer (whether at the time of signature or at any time thereafter) serve to contradict in any way the Initial Order or any of these Conditions, such contradictory terms shall not be incorporated unless and to the extent that a revised Initial Order is issued expressly incorporating any of them.

2.3 Where no Initial Order is provided, any Hardware or Services provided by CoolCare shall be subject to these terms and conditions and shall form the Agreement.

2.4 At any time during the Agreement Term, the Customer may request to purchase additional Hardware or Services from CoolCare by following the procedure set out in this clause 2.4:

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(a) The Customer shall notify CoolCare in writing that it wishes to purchase additional Hardware or Services, specifying in as much detail as is reasonably practicable the nature of the same ("Change Request");

(b) Within a reasonable time, CoolCare shall respond to the Change Request in writing, including details of the likely time required to implement the change, and any amendments to the Fees resulting from the change; and

(c) Until such time as a change is agreed in writing and signed by both parties, the Customer and CoolCare shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms as they existed prior to such change.

2.5 In consideration for the payment of the Fees, CoolCare will supply the Hardware, provide the Services and/or grant access to any Licensed Software (as appropriate) in accordance with this Agreement.

2.6 If there is an inconsistency between any of the provisions of this Agreement, the following descending order of priority shall apply: (i) the Initial Order (if any); and then (ii) these Conditions.

3. LICENSED SOFTWARE

3.1 Subject to payment of the Fees, and the Customer's compliance with the provisions of this Agreement, CoolCare hereby grants to the Customer and the Customer's Affiliates (if permitted by the Initial Order) a non-exclusive licence to use the Licensed Software and the Documentation during the Licence Period

3.2 Use of the Licensed Software shall be restricted to:

(a) the Customer Location(s);

(b) the Customer's personnel;

(c) object code form; and

(d) the normal business purposes of the Customer, including any acts incidental to such use (and, where use by Group is expressly permitted in the Initial Order, the normal business purposes of the Customer's Affiliates).

3.3 Any unauthorised modifications, use or improper installation of CoolCare firmware by the Customer (or on behalf of the Customer, other than by CoolCare's personnel) shall render all CoolCare's warranties and obligations under this Agreement null and void. CoolCare shall not be obliged to rectify any particular defect if attempts to rectify such defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of CoolCare.

3.4 Notwithstanding any other provision, CoolCare specifically denies any implied or express representation that the CoolCare firmware will:

(a) be fit to operate in conjunction with any hardware items or software products other than with those that are identified in the Initial Order (or in the relevant documentation) as being compatible with the CoolCare firmware; or (b) operate uninterrupted or error-free.

4. SOFTWARE SUBSCRIPTION SERVICES

4.1 "Use" of the Subscription Software means accessing it from a remote location solely in accordance with the Documentation for the Agreement Term.

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4.2 The Customer's access shall be limited to the Authorised Users who are licensed to use the applicable Subscription Software.

4.3 The Customer shall not access or use, (or attempt to access or use) the Subscription Software, the Services or the Site:

(a) in any way which interferes with, damages or disrupts, or might reasonably be expected to interfere with, damage or disrupt the Services, the Subscription Software, the Site, or any equipment, network or other software used in the provision of the Services;

Software, the Site, or any equipment, network or other software used in the provision of the Services;

(b) in any way which is unlawful, illegal or fraudulent, or has any unlawful, illegal or fraudulent purpose or effect;

(c) to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation;

(d) knowingly to store, transmit or upload any data or material that contains any Virus;

(e) knowingly to store, transmit or upload any data or material which:

(1) advocates, promotes or assists violence, any other illegal or unlawful activity;

(2) is obscene or depicts sexually explicit images;

(3) is offensive, hateful, defamatory or inflammatory;

(4) is threatening, abusive or which invades another's privacy, or causes needless anxiety or annoyance;

(5) advocates or promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;

(6) infringes any copyright, database right, trade mark or other proprietary right of any other person;

(7) is fraudulent or misleading;

(8) is made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence;

(9) causes damage or injury to any person or property; and CoolCare reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

4.4 The Customer shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(1) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Licensed Software, CoolCare API and/or Documentation (as applicable) in any form or media or by any means; or

(2) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Licensed Software; or;

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(b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Licensed Software or the Documentation; or

(c) undertake or attempt the measurement or monitoring of any aspect or attribute of the Software Subscription Services for the collection of commercial or technical intelligence, or
comparison with any other service; or

(d) use the Services and/or Documentation to provide services to third parties; or

(e) subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Licensed Software, the Services and/or Documentation available to any third party except the Authorised Users or in any other way seek to exploit the Licensed Software, the Services or Documentation on any commercial basis; or

(f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause; or

(g) make the Licensed Software, the Services or any Documentation available in any form other than as provided to the Customer by CoolCare.

5. OPEN-SOURCE SOFTWARE

5.1 Where Open-Source Software is made available to the Customer as part of the CoolCare firmware, the Customer acknowledges and agrees that:

(a) CoolCare is making such Open-Source Software available pursuant to the terms of the applicable end user licence agreement as is bundled with it;

(b) the Customer shall comply with the end user licence agreement; and

(c) any such Open-Source Software provided by CoolCare may only be used according to the terms and conditions of its end user licence agreement.

6. SERVICES

6.1 CoolCare shall provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

6.2 CoolCare shall use commercially reasonable endeavours to make the Software Subscription Services available 24 hours a day, seven days a week, except for:

(a) Planned Maintenance provided that CoolCare has used reasonable endeavours to give the Customer at least 4 Normal Business Hours' notice in advance; and

(b) unscheduled maintenance provided that CoolCare provides as much notice as reasonably practicable in advance.

6.3 Notice pursuant to Clause 6.2 may be provided by CoolCare directly via the Site/Services, or to the e-mail address of the Customer's key personnel, as set out in the Initial Order or as notified to the Customer by CoolCare from time to time.

6.4 CoolCare will, as part of the Services and at no additional cost to the Customer, provide the Customer with CoolCare's standard customer support services during Normal Business Hours in accordance with CoolCare's then-current Support Services Policy in effect at the time that the Services are provided. CoolCare may amend the Support Services Policy in its sole and absolute discretion from time to time. Where a Customer

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requires excessive use of CoolCare's standard customer support services due to a lack of training, CoolCare reserves the right to withdraw support until such time as the required training has been booked and paid for.

6.5 If the Customer wishes to access and use the CoolCare API or to connect our Services to any Customer Application as part of our Services, the Customer shall request access to the API Key, which shall remain confidential and not shared or distributed other than as permitted in writing by Coolcare, the Customer and any API User's access to the CoolCare API shall be subject to the terms and conditions of the API Licence to be found at http://www.CoolCare.co.uk/guides. The CoolCare API may only be accessed or utilised subject to the terms of the API Licence and may only be used with any Customer Application to the extent expressly permitted in writing by CoolCare.

7. SUPPLY OF HARDWARE

7.1 The terms of this clause apply in respect of any Hardware to be supplied pursuant to this Agreement, irrespective of whether it is purchased by the Customer or made available by CoolCare on a temporary basis in accordance with clause 8 below.

7.2 In consideration for the payment of all applicable Fees, CoolCare shall supply any purchased Hardware to the Customer pursuant to this Agreement.

7.3 The parties acknowledge that CoolCare is not the manufacturer of the Hardware.

7.4 CoolCare warrants that the Hardware shall be of marketable quality and fit for its intended purpose for a period of 1 year from the date of delivery to the Customer, save in the case of Subscribed Hardware which is subject to a hardware Refresh.

7.5 Delivery dates are approximate only and time of delivery is not of the essence. Delivery shall be completed on the arrival of the Hardware at the Delivery Location. The Customer is responsible for unloading, and any unloading that takes place shall be at the Customer's risk, unless this is expressly included as part of any Services to be provided by CoolCare.

7.6 CoolCare shall deliver the Hardware to the Delivery Location after the Hardware is ready. If the Customer fails to accept or take delivery of the Hardware (including failing to provide appropriate delivery instructions to CoolCare), CoolCare shall store the Hardware until delivery takes place, and may at its option charge the Customer for all related costs and expenses (including insurance).

7.7 Where 10 Business Days have elapsed since CoolCare attempted to re-deliver the Hardware to the Delivery Location and/or where CoolCare has either notified the Customer to arrange another delivery following failure of the first and the Customer has not engaged with this correspondence then CoolCare may resell or otherwise dispose of all of the Hardware or any part of it, and after deducting reasonable storage and selling costs, charge the Customer for any shortfall below, the price of the Hardware or a sum equivalent to 1 year's worth of the Hardware Subscription Services, as applicable.

7.8 Risk in the Hardware shall pass to the Customer on completion of delivery at the Delivery Location.

7.9 Title to the Hardware shall not pass to the Customer until CoolCare has received payment in full (in cleared funds) for the Hardware and Services (and all other hardware and services that CoolCare has supplied to the Customer or any part of its Group for which payment is due, under this or any other agreement). Where the Hardware is provided to the Customer

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as part of the Hardware Subscription Services, title shall not pass to the Customer at any point.

7.10 In the case of Hardware which is purchased by the Customer, from delivery until title has passed to the Customer, the Customer shall:

(a) hold the Hardware on a fiduciary basis as CoolCare's bailee;

(b) store the Hardware separately from all other goods and ensure that it is readily identifiable as CoolCare's property;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware; and

(d) maintain the Hardware in satisfactory condition and keep it insured on CoolCare's behalf against all risks for its full price.

Where the Customer is held to be insolvent (or CoolCare believes that the same is about to occur) before title to the Hardware passes to the Customer, or during the Hardware Subscription Period with respect to Subscribed Hardware (as applicable), if the Hardware has not been resold or irrevocably incorporated into another product or service, (without limiting any other right or remedy CoolCare may have) CoolCare may demand the Customer deliver up the Hardware and, if the Customer fails to do so promptly, enter any premises of the Customer (or a third party) where the Hardware is stored to recover it. The Customer shall ensure that CoolCare shall have similar rights of entry with respect to any third party who takes possession of the Hardware prior to the passage of title from CoolCare to the Customer.

8. SUBSCRIBED HARDWARE

8.1 In consideration for the payment of all applicable Fees, CoolCare shall provide the Subscribed Hardware to the Customer in accordance with these Conditions.

8.2 Use of the Subscribed Hardware shall be subject to any usage restrictions set out in the instruction manual for the relevant Subscribed Hardware, or as provided by CoolCare to the Customer in writing from time to time.

8.3 The Hardware Subscription shall commence on the Hardware Subscription Commencement Date and shall continue for the Hardware Subscription Period, unless terminated earlier in accordance with these Conditions. At the end of the Hardware Subscription Period the Fees for all Subscribed Hardware shall increase in accordance with CoolCare's standard rates for such Subscribed Hardware then in force, and be charged monthly in advance until the end of the Subscribed Hardware Risk Period.

8.4 Subject to clause 8.1, any return of Subscribed Hardware to CoolCare shall be at the Customer's expense.

8.5 The Subscribed Hardware shall remain at the sole risk of the Customer during the Subscribed Hardware Risk Period.

8.6 Title in and to the Subscribed Hardware shall at all times remain with CoolCare, and the Customer shall have no right, title or interest in or to the Subscribed Hardware (save the right to possession and use of the Subscribed Hardware subject to these Conditions.

8.7 During the Subscribed Hardware Risk Period, the Customer shall:

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(a) ensure that the Subscribed Hardware is kept and operated in a suitable environment and used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by CoolCare;

(b) take such steps (including compliance with all safety and usage instructions provided by CoolCare) as may be necessary to ensure, so far as is reasonably practicable, that the Subscribed Hardware is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

(c) not use the Subscribed Hardware for any unlawful purpose;

(d) maintain at its own expense the Subscribed Hardware in good and substantial repair in order to keep it in a condition similar to that at the Hardware Subscription Commencement Date (fair wear and tear excepted);

(e) keep CoolCare fully informed of all material matters relating to the Subscribed Hardware;

(f) keep the Subscribed Hardware at all times at the Customer Location and shall not move or attempt to move any part of the Subscribed Hardware to any other location without CoolCare's prior written consent; and

(g) not, without the prior written consent of CoolCare, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Subscribed Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it.

(h) The Customer shall at its own expense, obtain and maintain the following insurances:

(i) insurance of the Subscribed Hardware to a value not less than its replacement value against all usual risks of loss, damage or destruction by fire, theft or accident; and

(j) insurance for such amounts as a prudent owner or operator of the Subscribed Hardware would insure for, to cover any third party or public liability risks of whatever nature and however arising in connection with the Subscribed Hardware.

(k) the Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to CoolCare and proof of premium payment to CoolCare to confirm the insurance arrangements.

8.8 The Customer acknowledges that CoolCare shall not be responsible for any loss of or damage to the Subscribed Hardware arising out of or in connection with any negligence, misuse, mishandling of the Subscribed Hardware or otherwise caused by the Customer or its officers, employees, agents and contractors. Where any of the foregoing occur, CoolCare may elect to repair or replace any damaged items of Subscribed Hardware, and charge any costs of doing so to the Customer.

8.9 Deposit

(a) Where the Hardware Subscription Payment Plan includes a Deposit, the Deposit is a deposit against default by the Customer of payment of any Fees due in respect of the Leased Hardware or any loss of or damage caused to the Leased Hardware. If the Customer:

(1) fails to pay any Charges in accordance with the Lease Payment Plan;

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(2) does not return the Leased Hardware or any part of it following the Lease Period; or

(3) causes any loss or damage to the Leased Hardware beyond fair wear and tear,

CoolCare shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to CoolCare any sums deducted from the Deposit within 10 days of a demand for the same. The Deposit (or balance thereof) shall be refundable within 30 days of the end of the Lease Period, provided the relevant Leased Hardware has been returned.

8.10 No more than once in any 12-month period, CoolCare may replace all functional Subscribed Hardware with new/updated devices (a "Hardware Refresh"), and in any such case:

(a) Where the Hardware Refresh occurs during the Hardware Subscription Period and the Hardware Refresh is not due to a request by Customer, the cost of returning Subscribed Hardware shall be borne by CoolCare; and

(b) Upon delivery of any replacement Hardware pursuant to the Hardware Refresh, such replacement Hardware shall form part of the Subscribed Hardware for the purposes of this clause 8.

8.11 For the avoidance of doubt, any upgrades to the Subscribed Hardware requested by the Customer which are not due to a Hardware Refresh may incur extra Fees.

8.12 At the end of the Subscribed Hardware Risk Period, the Customer shall return all Subscribed Hardware to CoolCare:

(a) Within 10 Business Days; and

(b) In good working order **(fair wear and tear excepted)**.

9. TRAINING SERVICES

9.1 The Customer acknowledges and agrees that:

(a) any trainer made available to the Customer by CoolCare from time to time may be replaced at any time with another suitably-qualified trainer at CoolCare's option;

(b) any materials provided in respect of Training Services are licensed to the Customer solely for the purposes of the receipt of such Training Services by the Customer's personnel and (if permitted by the Initial Order) use by the personnel of the Customer's Affiliates.

9.2 Where Training Services (or any part of them) are cancelled within 5 Business Days of the intended training day, CoolCare may invoice the Customer for (or where the Fees have already been paid, retain) 100% of the Fees applicable to such Training Services (including all expenses CoolCare has incurred which cannot be refunded in their entirety).

10. CUSTOMER DATA

10.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer acknowledges that any Personal Data processed by an API User authorised by it and CoolCare to access and/or use the CoolCare API shall act as a direct Processor of the Customer and not of CoolCare.

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10.2 CoolCare shall follow its archiving procedures for Customer Data as set out in its Back- Up Policy available at www.CoolCare.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended by CoolCare from time to time in its sole discretion (the "Back-Up Policy"). In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for CoolCare to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by CoolCare in accordance with the archiving procedure described in the Back-Up Policy. CoolCare shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by CoolCare to perform services related to Customer Data maintenance and back-up).

10.3 CoolCare shall, in providing the Services, comply with its Security Policy relating to the security of the Customer Data available at www.CoolCare.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended by CoolCare from time to time in its sole discretion.

10.4 The Customer grants CoolCare the right to compile, collect, copy, modify, publish and use anonymous data in aggregate form that is generated from, or based upon, Customer's use of the Services ("Aggregate Data"); provided that:

(a) Aggregate Data does not include Customer Data or any of the Customer's Confidential Information;

(b) Aggregate Data does not include any information that can be used directly, or in connection with other data, to identify, contact or locate an individual;

(c) Aggregate Data is combined with data from other customers and cannot be used to identify, directly or indirectly, the Customer; and

(d) CoolCare uses Aggregate Data solely for data analytics, statistical reporting, marketing, or other lawful business purposes.

10.5 The parties agree, for the purpose of the Protected Data, the Customer shall be the Data Controller and CoolCare shall be the Data Processor.

10.6 CoolCare shall process Protected Data in compliance with the obligations of Data Processors under Data Protection Legislation in respect of the performance of its obligations under this Agreement and the terms of this Agreement.

10.7 Each party shall comply with Data Protection Legislation in connection with the Processing of Protected Data, the Services and the exercise of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Legislation and the terms of this Agreement and take appropriate technical and organisational measures against unauthorised or unlawful Processing of the Protected Data or its accidental loss, destruction or damage.

10.8 The Customer warrants, represents and undertakes that all Personal Data sourced by the Customer for use in connection with the Services shall comply in all respects, including in terms of its collection, storage and Processing with Data Protection Legislation and all instructions given by the Customer in respect of Personal Data are in accordance with Data Protection Legislation.

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10.9 When Processing Protected Data received from or on behalf of the Customer or otherwise obtained in connection with the performance of CoolCare's obligations under this Agreement CoolCare shall:

(a) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this clause and Appendix 1 (Data Processing Details) as updated from time to time by the written agreement of the parties (Processing Instructions) or if the Applicable Law requires it to process Protected Data otherwise than in accordance with the Customer's instructions CoolCare shall notify the Customer of any such requirement (unless the legal requirement prohibits this);

(b) inform the Customer if CoolCare becomes aware of an instruction that may infringe Data Protection Legislation (without prejudice to clauses 10.6 and 10.7) and to the extent permitted by law CoolCare shall have no liability however so arising for any losses, costs, expenses or liabilities in connection with Processing in accordance with the Customer's instructions, once the Customer has received such information;

(c) taking into account the nature of the Processing, implement and maintain at its cost and expense as appropriate the technical and organisational measures in relation to the Processing of Protected Data by CoolCare;

(d) assist the Customer in its obligations to respond to Data Subject Requests in so far as this is possible and reasonable, at the Customer's own cost;

(e) ensure that all persons authorised by it or by any Sub-Processor to process Protected Data are subject to obligations no less strict than those set out in this clause;

(f) make available to the Customer such information as is reasonably necessary to demonstrate CoolCare's compliance with the obligations of Data Processing under Data Protection Legislation and allow for audits (i.e. a review or inspection of such information to the extent reasonably necessary) by the Customer for this purpose, subject to the Customer:

(1) giving reasonable prior notice, ensuring all information obtained, including but not limited to CoolCare's Intellectual Property Rights, is kept strictly confidential (save as otherwise required by Applicable Law);

(2) ensuring the audit/inspection is undertaken during normal business hours with minimal disruption to CoolCare's (or Sub-Processors') business;

(3) paying CoolCare's reasonable costs in connection with this.

(g) notify the Customer of any Personal Data Breach without undue delay and provide the Customer with details of the Personal Data Breach;

(h) subject to clause 18.6(d), delete or return all Protected Data to the Customer, at the Customer's written request, in such form as the Customer reasonably requests within a reasonable time at the earlier of:

(1) the end of the provision of the relevant Services related to Processing; or

(2) once Processing by CoolCare of any Protected Data is no longer required for CoolCare's performance of its obligations under the Contract; and delete existing copies (unless storage of any data is required by Applicable Law).

(i) ensure all employees involved in the Processing of Protected Data have committed themselves to confidentiality obligations; and

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(j) provide reasonable assistance to the Customer (at Customer's cost) in the carrying out of an assessment of the impact of the envisaged Processing (a data protection impact assessment), taking into account the nature of the Processing and the information available to CoolCare.

10.10 The Customer acknowledges that once Protected Data is deleted it is irretrievable and that such deletion may affect the accuracy of subsequent reports that would have included the Protected Data had it not been deleted.

10.11 The Customer agrees that it is the Customer's responsibility to inform CoolCare of which named individuals or categories of individuals are authorised on behalf of the Customer to request the deletion or return of Protected Data in accordance with clause 9.8(j) and that CoolCare shall not be liable for the deletion of such data at the request of individuals on behalf of the Customer who are not duly authorised.

10.12 The Customer agrees that CoolCare may

(a) transfer Protected Data to countries outside the European Economic Area provided all transfers by CoolCare of Protected Data shall be affected by way of Appropriate Safeguards and in accordance with Data Protection Legislation; and

(b) appoint sub-processors to process the Protected Data, provided that it (i) informs the Controller of any intended changes concerning the addition or replacement of any SubProcessor (and allows the Customer reasonable opportunity (no more than 10 Business Days) to object to such change); and (ii) enters into a written agreement with the SubProcessor that contain materially the same terms as those set out in this Agreement; and (iii) remains liable to the Customer for any breaches on behalf of the SubProcessor.

10.13 CoolCare shall take note of and consider any reasonable objection raised by the Customer pursuant to clause 10.12(b). For the avoidance of doubt, CoolCare may (but shall not be required to) appoint a different sub-processor as a result of any such objection.

10.14 The Customer shall indemnify and keep indemnified CoolCare in respect of all Data Protection Losses suffered or incurred by CoolCare or any Sub-Processor arising from or in connection with any:

(a) non-compliance by the Customer with the Data Protection Legislation;

(b) processing carried out by CoolCare or any Sub-Processor pursuant to any Processing

(c) Instructions that infringes any Data Protection Legislation; or

(d) breach by the Customer of any of its obligations under this clause.

10.15 If a party receives a compensation claim from a person relating to the Processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim and the party with conduct of the action shall make no admission of liability nor agree any settlement without prior written consent of the other party and shall consult fully with the other party in relation to any such action.

11. COOLCARE'S OBLIGATIONS

11.1 CoolCare undertakes that the Services will be performed with reasonable skill and care.

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11.2 The undertaking at clause 11.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to CoolCare's instructions, or modification or alteration of the Services by any party other than CoolCare or CoolCare's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, CoolCare will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 11.1. Notwithstanding the foregoing, CoolCare:

(a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

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

11.3 CoolCare warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

12. CUSTOMER'S OBLIGATIONS

12.1 The Customer shall:

(a) provide CoolCare with:

(1) all necessary co-operation in relation to this Agreement; and

(2) all necessary access to such information as may reasonably be required by CoolCare, in order to render the Services, including but not limited to Customer Data, security access information and configuration services;

(b) comply with all applicable laws and regulations with respect to its activities under this Agreement;

(c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner.

In the event of any delays in the Customer's provision of such assistance as agreed by the parties, CoolCare may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Authorised Users use the Licensed Software, the Services and the Documentation in accordance with the terms and conditions of this Agreement and where relevant API Users use and access the CoolCare App in accordance with the API Licence and the Customer shall be responsible for any Authorised User's breach of this Agreement and any API User's breach of the API Licence;

(e) manage their Authorised Users' login details and access and use of any API Key and set appropriate security measures and access permissions for their Users and limit, record and provide upon request records of access permissions and access activity;

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(f) obtain and shall maintain all necessary licences, consents, and permissions necessary for CoolCare, its contractors and agents to perform their obligations under this Agreement, including the Services;

(g) ensure that its network and systems comply with the relevant specifications provided by CoolCare from time to time; and

(h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to CoolCare's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

12.2 The Customer shall use all reasonable endeavours (including the use of reasonable technical and organisational security measures) to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify CoolCare.

13. FEES AND PAYMENT

13.1 The Customer shall in consideration for the supply of Hardware and/or the provision of the Services pay the Fees as applicable from time to time in accordance with this clause 13.

13.2 The Customer will pay all invoices:

(a) in full and without deduction or set-off, in clear funds;

(b) either within 30 days of the date of each invoice or in advance for the provision of Hardware Subscription Services, Software Subscription Services or the delivery of training services, whichever date being the earliest; and (c) to the bank account nominated by CoolCare.

13.3 If sums due under this Agreement are not paid in full by the due date:

(a) CoolCare may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of the Bank of England from time to time in force, and;

(b) interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

13.4 If the Customer fails to pay an invoice in accordance with clause 13.2, CoolCare reserves the right to provide the Customer with 7 days' notice of disconnection of the Services, to refuse to supply any Hardware ordered by the Customer and to require the immediate return of any Subscribed Hardware which is in the Customer's possession. Failure to make payment within the 7 days' notice period will result in the Software Subscription Services being disconnected and the Subscribed Hardware rendered inoperable on expiry of the 7 day notice period.

13.5 All Services and Hardware shipments will remain suspended until all invoices due under clause 13.2 are paid in full together with any interest accrued in accordance with clause 13.3.

13.6 If subsequent to any suspension of the Subscription Services in accordance with this clause 13.6 the Customer requests that the Subscription Services be restored, CoolCare will be entitled to charge a reconnection fee of £250, or such other sum as CoolCare deem reasonable, to reconnect the them.

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13.7 If any invoices remain outstanding and are not paid in full in accordance with this Agreement, CoolCare shall be entitled without prejudice to any right:

(a) to terminate this Agreement under clause 13; and/or

(b) to engage debt collectors to pursue outstanding invoices.

13.8 The Customer shall also be liable to pay all costs, fees, disbursements and charges including legal fees and costs reasonably incurred by CoolCare in the recovery of any unpaid invoices regardless of the value of the claim.

13.9 All amounts and Fees stated or referred to in this Agreement:

(a) shall be payable by direct debit in pounds sterling;

(b) are exclusive of value added tax, which shall be added to CoolCare's invoice(s) and payable at the rate and in the manner prescribed by law; and

(c) are non-refundable, and the Customer's failure to make use of the Services or any part thereof will not entitle the Customer to any refund of such Fees.

13.10 No payment will be effective unless and until received by CoolCare in cleared funds.

13.11 Subject to clause 13.13 below, CoolCare shall be entitled to vary the Fees for the Subscription Services in either of the circumstances detailed below:

(a) where the Fees for the Subscription Services have been fixed for an Initial Term, on the expiry of that Initial Term, and on 1 April each year thereafter, provided that the parties do not agree to a subsequent fixed-term; or (b) in any other case, on 1 April each year.

13.12 For the avoidance of doubt, where the Fees for the Subscription Services have been fixed for an Initial Term, CoolCare shall have the right to increase the Fees at any time where:

(a) the Customer (or any permitted Affiliate) increases the number of Customer Locations or Number of Registered Beds (as appropriate) covered by the Subscription Services; or

(b) where the Fees relate to the purchase of Hardware or Training Services.

13.13 Where the Fees for the Subscription Services have been fixed for an Initial Term, no reduction to the same shall be effective prior to the expiry thereof.

13.14 Where the Fees are calculated with reference to the Number of Registered Beds, the following provisions shall apply:

(a) The Customer shall promptly inform CoolCare of any changes to the Number of Registered Beds;

(b) CoolCare may make reviews at intervals it deems appropriate of the Number of Registered Beds. Any changes to the Number of Registered Beds will be charged for retrospectively from the date of the change in accordance with this clause 13; and

(c) If the Customer is not licenced to provide beds and, therefore, cannot provide a Number of Registered Beds, a bed rated figure will be agreed between the parties based on projected usage to calculate the Fees.

13.15 If the Customer requires their database to be amended by the removal or separation of Data, CoolCare shall be entitled to charge for the work required at a rate equal to the then current rate for one day's on-site training.

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13.16 The Customer will not be entitled to access or use the Services without first: (a) providing correct identification and contact details; and

(b) paying all applicable Fees.

13.17 The Customer will notify CoolCare of any change to its identification and contact details as soon as reasonably practicable, and in any event within 28 days of the change.

14. PROPRIETARY RIGHTS

14.1 The Customer acknowledges and agrees that CoolCare and/or its licensors own all Intellectual Property Rights in the Software, the CoolCare API, the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.

14.2 CoolCare confirms that it has all the rights in relation to the Software, the Services, the CoolCare API and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

14.3 CoolCare shall be granted a perpetual irrevocable royalty-free, worldwide license to use or incorporate into the Services, the Software, the CoolCare API, the Site or the Documentation any proposals, requests, or ideas in respect of the Services ("Customer Input") provided by or for the Customer, and to use or incorporate any Customer Input in products or services made available from time to time by CoolCare or its affiliates to their customers at large.

15. CONFIDENTIALITY

15.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the receiving party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d) can be shown by written evidence to have been independently developed by the receiving party; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

15.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, shall not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the proper discharge of its obligations under this Agreement.

15.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

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15.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party which is not a contractor of that party or otherwise under that party's direction or control.

15.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Software and/or the Services, constitute CoolCare's Confidential Information.

15.6 CoolCare acknowledges that the Customer Data is the Confidential Information of the Customer.

15.7 The provisions of this clause 15 shall survive termination of this Agreement, however arising.

16. INDEMNITY

16.1 CoolCare shall, subject to clause 16.3, defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services, the Software or the Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, or any copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

(a) CoolCare is given prompt notice of any such claim;

(b) CoolCare is given sole authority to defend or settle the claim; and

(c) the Customer provides CoolCare (at CoolCare's expense) with all co-operation reasonably required for the defence and settlement of such claim.

16.2 In the defence or settlement of any claim, CoolCare may procure the right for the Customer to continue using the Services, replace or modify the infringing Services, the Software or the Documentation so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 7 Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

16.3 In no event shall CoolCare, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

(a) a modification of the Services, the Software or the Documentation not made by or on behalf of CoolCare; or

(b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by CoolCare; or

(c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from CoolCare or any appropriate authority; or

(d) the combination of the Service with any other service, software, or system not provided by CoolCare.

16.4 The foregoing states the Customer's sole and exclusive rights and remedies, and CoolCare's (including CoolCare's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

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16.5 The Customer shall defend, indemnify and hold harmless CoolCare against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

(a) the Customer is given prompt notice of any such claim;

(b) CoolCare provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and (c) the Customer is given sole authority to defend or settle the claim.

17. LIMITATION OF LIABILITY

17.1 This clause 17 prevails over all other clauses in this Agreement.

17.2 Subject to the provisions of clause 17.4 this clause 17 sets out the entire financial liability of CoolCare (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of this Agreement;

(b) any use made by the Customer of the Services, the CoolCare API, Software and Documentation or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

17.3 Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services, the CoolCare API and the Documentation by the Customer, and for conclusions drawn from such use. CoolCare shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to CoolCare by the Customer in connection with the Services, or any actions taken by CoolCare at the Customer's direction;

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

the Services and the Documentation are provided to the Customer on an "as is" basis.

17.4 Nothing in this Agreement excludes the liability of CoolCare: (a) for death or personal injury caused by CoolCare's negligence; or (b) for fraud or fraudulent misrepresentation.

17.5 The liability of CoolCare in respect of loss or damage to tangible property of the Customer caused by its negligence shall not exceed one million (1,000,000) pounds.

17.6 Subject to clauses 17.3, 17.4 and 17.5:

(a) CoolCare shall not be liable whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, loss of data, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

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(b) CoolCare's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to a sum equal to the total Fees paid to CoolCare for the Service that caused the loss for which liability is sought, during the period of 12 months immediately prior to the event giving rise to the claim.

17.7 CoolCare shall not be liable for any deletion, destruction, damage, or other loss of Customer Data:

(a) not attributable to any act or omission on the part of CoolCare Limited or any person acting on its behalf; or

(b) on termination or suspension of the Customer's access to the Software Subscription Service in accordance with clause 18.

18. TERM AND TERMINATION

18.1 This Agreement shall come into force on the Effective Date and shall continue for the Agreement Term. Following the Initial Term or where no Initial Order is concluded, the following provisions shall apply:

(a) The Agreement shall continue until the obligations agreed between the parties have been fulfilled (e.g. the provision of Hardware or Training Services); and

(b) Any Subscription Services shall continue indefinitely on a rolling month-to-month basis at CoolCare's standard rates for such Subscription Services then in force until terminated in accordance with these Conditions.

18.2 the Agreement may be terminated for convenience by the Customer in writing as follows:

(a) with respect to Software Subscription Services, on 30 days' notice, such notice to expire on or after the expiry of the Initial Term; and

(b) with respect to Hardware Subscription Services, on 90 days' notice, such notice to expire on or after the expiry of the Hardware Subscription Period.

18.3 CoolCare may terminate this Agreement on 6 months' notice in writing in advance, such notice period to end no earlier than the date of expiry of the Initial Term or Hardware Subscription Period (whichever is later), where one has been agreed.

18.4 Without prejudice to any other rights or remedies to which the parties may be entitled, CoolCare may terminate this Agreement on 7 days' notice without liability if any Fees are not paid when due.

18.5 Without prejudice to any other rights or remedies to which the parties may be entitled,

either party may terminate this Agreement without liability to the other if:

(a) the other party commits a material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

(b) upon the other party passing a resolution for winding-up or having a petition to wind up presented against it or going into liquidation, whether voluntary or compulsory (save for

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the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this Agreement) or suffering a winding-up order being made against it or going into administration; or

(c) the other party proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is made in relation to the Supplier under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by that party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;

(d) a receiver or administrative receiver or administrator is appointed or an encumbrancer takes possession of the undertaking or assets (or any part thereof) of the other party; or

(e) the other party is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) or ceases to or threatens to cease to carry on its business or enters into a composition with its creditors; or

(f) the other party takes or suffers any action similar or analogous to the events described in clauses 18.4 (b), (c), (d) or (e) in any jurisdiction in consequence of debt; or (g) the other party ceases, or threatens to cease, to trade.

18.6 CoolCare shall be entitled to terminate this Agreement with immediate effect if the Customer undergoes a change of Control which CoolCare considers at its discretion to be detrimental to CoolCare's commercial interests. For the purposes of this clause 18.5, "Control" shall have the meaning given it by Section 1124 of the Corporation Taxes Act 2010.

18.7 On termination of this Agreement for any reason:

(a) all licences granted under this Agreement shall immediately terminate;

(b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

(c) Within 10 Business Days, the Customer shall return all Subscribed Hardware to CoolCare in good working order **(fair wear and tear excepted)**;

(d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced; and

(e) CoolCare may destroy or otherwise dispose of any of the Customer Data in its possession unless CoolCare receives, no later than fourteen (14) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. CoolCare shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty

(30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination).

18.8 If this Agreement is terminated for any reason prior to expiry of the Initial Term, the

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Customer will pay to CoolCare all Fees due up to the date of termination and those which would have become payable for the full Initial Term under this Agreement within fourteen (14) days from the date of termination.

18.9 CoolCare shall in respect of any material breach of this Agreement by the Customer be entitled to take whatever action it considers appropriate including any or all of the following:

(a) issue of a warning to the Customer;

(b) immediate, temporary or permanent withdrawal of the Customer's right to use the Subscription Services;

(c) immediate, temporary or permanent removal of any data, posting or other material uploaded to the Site by the Customer;

(d) legal proceedings against the Customer for reimbursement on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) of all costs incurred by CoolCare resulting from the breach.

19. VARIATION

19.1 CoolCare reserves the right to change these Terms (a "**Variation**") at any time, provided that any such Variation will only have effect from the date 14 days after CoolCare serves notice thereof on the Customer in accordance with clause 27.

19.2 Any continued use of the Services by the Customer more than 14 days after notification of any Variation in accordance with clause 19.1 will constitute the Customer's consent to such Variation. If the Customer does not consent to the Variation then notice must be served on CoolCare to terminate this Agreement within 14 days after notification of any Variation and clause 18.8 shall not apply.

19.3 Any subsequent amendment to an Initial Order agreed by both parties in writing shall vary the agreement between the parties.

20. FORCE MAJEURE

20.1 Neither CoolCare nor any of its employees, agents or sub-contractors shall be deemed in breach of this Agreement or under any liability whatsoever to the Customer for any failure or delay in performing the Services or any obligation under this Agreement resulting from circumstances beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of CoolCare or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, epidemic or pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

20.2 CoolCare will not be liable for any defect in or failure of any product or services not provided by or on behalf of CoolCare (a "Third Party Default"), and shall not be liable for any delay to or interruption or failure of the Service to the extent that such delay, interruption or failure is attributable to a Third Party Default.

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21. WAIVER

21.1 No waiver by any party of any breach or non-fulfilment by any other party of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach of that or any other provision and no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver of that right or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise of it or the exercise of any other right, power or remedy provided by law or under this Agreement.

21.2 Any waiver of any right, power or remedy under this Agreement must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

22. SEVERANCE

22.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23. ENTIRE AGREEMENT

23.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

23.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

24. ASSIGNMENT

24.1 The Customer shall not, without the prior written consent of CoolCare, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

24.2 CoolCare may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

25. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

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26. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

27. NOTICES

27.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Initial Order, or such other address as may have been notified by that party for such purposes, or sent by PDF document attached to the email address as set out in the Initial Order.

27.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of receipt.

27.3 CoolCare may notify the Customer of any Variation made in accordance with clause 19, by notices sent by means of the Software Subscription Services or posted on the Site.

28. DISPUTE RESOLUTION

28.1 Except as otherwise provided, in the event of any dispute arising out of or in relation to this Agreement, the parties must first use their respective best endeavours to consult and negotiate with each other in good faith and, recognising their mutual interests, attempt to reach a settlement of the dispute satisfactory to both parties. To such end the parties must within 10 Business Days of a dispute arising convene a meeting between their authorised representatives and any other relevant members of management having regard to the matter under discussion (together, **Appointed Persons**) to attempt to resolve the dispute.

28.2 If the Appointed Persons agree upon a settlement of the dispute, they will sign a statement setting out its terms and the parties will ensure that it is fully and promptly carried out. If the Appointed Persons do not reach such a settlement within 10 Business Days of the meeting convened in accordance with clause 28.1 , the dispute shall be decided by the English Courts in accordance with clause 30.

29. GENERAL

The Customer hereby acknowledges that:

(a) CoolCare's obligations under this Agreement accord with the Customer's expectations and are fair and reasonable;

(b) some limitation of liability is to be expected; and

(c) the limitations of liability are fair and reasonable in the light of the Fees to be paid and the nature of the Services supplied.

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30. GOVERNING LAW AND JURISDICTION

30.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

30.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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APPENDIX 1

DATA PROCESSING DETAILS

1. SUBJECT-MATTER OF PROCESSING:

Any Protected Data input by or on behalf of the Customer into the Software.

2. DURATION OF THE PROCESSING:

The Agreement Term. Some Protected Data may be retained by CoolCare following the Agreement Term in order to comply with CoolCare's legal obligations.

3. NATURE AND PURPOSE OF THE PROCESSING:

Provision of software for the performance of CoolCare's obligations under this Agreement.

Where the Customer has agreed in writing, data analytics services may be provided in order to identify trends and make predictions based on Protected Data. In such a case, Protected Data shall be pseudonymised/anonymised to the greatest extent possible. Such processing shall not take place without the express written agreement of the Customer.

4. TYPE OF PERSONAL DATA:

Data in relation to data subjects including (but not limited to):

- Name(s)
- Postal address(es)
- E-mail address(es)
- Telephone number(s)
- Fax number(s)
- Bank account details
- Gender
- Sexual orientation
- Age
- Date of birth
- Photo(s)
- Marital status
- Care type
- Medical information
- Care information
- Details of death
- Details of hospital admission
- Religion

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- Ethnicity
- Nationality
- NHS number
- Employment details
- DBS and right to work details
- Professional registration details
- Qualifications

5. CATEGORIES OF DATA SUBJECTS:

- Customer residents
- Customer residents' relatives
- Customer residents' next of kin
- Customer residents' emergency contacts
- Customer residents' professional contacts
- Customer prospective residents
- Customer enquirers
- Customer employees
- Customer employees' next of kin
- Customer employees' referees
- Customer employees' emergency contacts
- Customer job applicants
- Customer suppliers

6. PROCESSING INSTRUCTIONS

CoolCare to have the following security measures in place:

- adherence with CoolCare's data protection policy;
- adherence with CoolCare's security/back-up policy;
- staff training as and when required;
- internal audits of processing activities as and when required;
- controlled access to CoolCare's premises.

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