

CareCubed Cost of Care

Terms and Conditions

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Agreement

This CareCubed Cost of Care (CareCubed) licence agreement (the “**Agreement**”) is between the Licensee(s) (as defined in the CareCubed Licence Schedule appended to this Agreement (the “**Schedule**”), and iESE Innovation Ltd (“**iESE**”), a company registered in England and Wales with registration number 08490888 and registered address 37 St Margarets Street, Canterbury CT1 2TU, each a “**Party**” and collectively “the **Parties**”.



Terms & Conditions

By signing this Agreement or registering on www.CareCubed.org for the iESE CareCubed Services (as defined within the Schedule), the Licensee agrees to the following terms and conditions.

'Documentation' within this Agreement is defined as CareCubed associated media, printed materials and online documentation, including user guides and videos.

Licence

- 1.1. In consideration of the Licensee agreeing to abide by the terms in this Agreement and paying the price for the Services, iESE hereby grants to the Licensee a non-exclusive Licence to use the Services purchased in relation only to the corresponding cohort of users of the Services ("Service User"). For example, the CareCubed adults module is licensed to be used on any adult care placement and is not licensed to be used on child placements. Where multiple organisations share a team, the above Licence shall extend to those multiple organisations set out in the Schedule, provided that the Licensee:
 - 1.1.1. informs each organisation of the terms on which the Licence is granted and procures that each organisation complies with this agreement as if it were the Licensee; and
 - 1.1.2. shall be liable of the actions and omissions of those other organisations as if they were the actions or omissions of the Licensee.
- 1.2. The Licensee may:
 - 1.2.1. Access CareCubed for the internal business purposes of the Licensee only. Internal business purpose means the use of CareCubed by employees or authorised representatives of the Licensee(s) for the purpose of recording needs, calculating care package prices, analysis and reporting of care packages, and negotiation of care package



prices, and for training by an accredited CareCubed trainer whether or not an employee of the Licensee.

1.2.2. Receive and use any free supplementary updates of CareCubed and corrections of errors as may be provided by iESE from time to time.

1.3. Except as expressly set out in this Agreement or as permitted by any local law, the Licensee undertakes:

1.3.1. not to copy CareCubed or the Documentation except where such copying is incidental to normal use of CareCubed or where it is necessary for the purpose of back-up or operational security;

1.3.2. not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify CareCubed or the Documentation;

1.3.3. not to make alterations to, or modifications of, the whole or any part of CareCubed;

1.3.4. not to disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of CareCubed nor attempt to do any such things except to the extent that such actions cannot be prohibited by virtue of section 296A of the Copyright, Designs and Patents Act 1988;

1.3.5. to supervise and control use of CareCubed and ensure that the Licensee's employees and authorised representatives use CareCubed in accordance with the terms of this Agreement; and

1.3.6. to include the copyright notice of iESE on all entire and partial copies the Licensee makes of CareCubed including any associated documentation or other related materials on any medium.

Registration

2.1 To register on CareCubed, the Licensee must provide details of the Licensee organisation and a contact individual ("**primary user**") personal account that are accurate to the best of Licensee knowledge (including, if multiple organisations



are set out in the Schedule, the details of those other organisations and contact individual personal accounts).

Intellectual Property

3.1 The content and function of CareCubed is protected by copyright, trademarks and other intellectual property rights. The Licensee may use and display the content of CareCubed on a computer or Internet connected device, store downloaded cases in electronic form on disk or print copies for discussion and distribution provided the Licensee keeps intact all and any copyright, logos and proprietary notices. The Licensee may not otherwise reproduce, modify, copy or distribute or use for commercial purposes any of the materials or content on the iESE CareCubed site without prior written permission from iESE.

3.2 All case information entered by the Licensee into CareCubed will be and will remain the intellectual property of the Licensee. All statistics generated by Licensee's use and other users' use of the system shall be the intellectual property of iESE.

3.3 The Licensee acknowledges that all intellectual property rights in CareCubed and the Documentation throughout the world belong to iESE and that the Licensee has no rights in, or to, CareCubed or the Documentation other than the right to use CareCubed and the Documentation in accordance with the terms of this agreement.

3.4 No licence is granted to Licensee in these Terms and Conditions to use any trademark of iESE other than as set out in this Agreement.

Data Protection and Security

4.1 iESE shall comply with relevant UK data protection legislation.

4.2 The Licensee's registration for the Services constitutes an instruction to iESE to process data on the Licensee's behalf.

4.3 iESE is the data processor.



4.4 iESE shall use ThCo Limited (company number 05874189) and IOMart Group Limited (company number SC204560) as sub-processors for CareCubed. The Licensee's registration for the Services constitutes agreement to the use of these sub-processors. iESE will provide one month's written notice to the Licensee beforehand if iESE plan to change the sub-processors. Continued use of CareCubed following any change of sub-processor constitutes agreement to the use of the new sub-processors.

4.5 Article 9 of the GDPR legislation sets out a range of special information which is not allowable to process unless one or more conditions are met. In the case of CareCubed, the special information is on health, and the allowable reasons are the provision of health or social care and the management of health or social care systems and services.

4.6 The data to be processed (the "**Customer Data**") is data relating to individuals in, or expected to be placed within, a health or care service. Whether commissioner or provider of care services, the Licensee may hold information which together with the Customer Data identifies the individual. In these circumstances, the Licensee will want to consider the information to be personal. For this reason, iESE treats Customer Data as personal and manages the data on the Licensee's behalf as a data processor.

4.7 The purpose of the processing of the data is to enable the Licensee to fulfil obligations to commission or provide care packages for people with health and/or care needs. Processing includes storage and retrieval of care needs for calculation of support hours and associated costs.

4.8 The Licensee chooses which data is to be processed by entering it on to CareCubed.

4.9 The duration of the processing is the duration of the Licence to CareCubed. For any specific CareCubed case, the duration of the processing is from the point of data entry by the Licensee, to the point of data deletion by the Licensee. Any data left undeleted by the Licensee at the end of the Licence shall be deleted by iESE within one year of the Licence ending.

4.10 The Licensee is the data controller. As the data controller, the Licensee's obligations with respect to CareCubed are to:



- 4.10.1 maintain up to date contact information in CareCubed for the primary users;
- 4.10.2 exercise appropriate controls on approval and deactivation of CareCubed users for the Licensee organisation, and control CareCubed passwords;
- 4.10.3 never use Service User names within CareCubed, and always to pseudonymise cases by means of a Service User reference rather than a Service User name; and
- 4.10.4 notify iESE as soon as practicable in the event of a CareCubed data breach coming to the Licensee's attention, so that iESE may, with the Licensee, take appropriate steps to manage the breach which may include deactivation of the Licensee's account.

4.11 CareCubed uses cookies, which are small pieces of information stored on the Licensee's device, to track users' journey from page to page and also to store preferences relating to how CareCubed operates.

4.12 CareCubed uses analytics to help iESE accurately estimate the number of visitors to CareCubed and volumes and patterns of usage. This enables iESE to build statistics about user journeys, which could help iESE improve the Services over time.

Availability

5.1 The “**Service Availability Target**” for CareCubed is the amount of time that the system should be available to customers. This is 99% of time, measured 24/7/365.

5.2 iESE will use its reasonable endeavours to achieve the Service Availability Target, but it is recognised that downtime may result from factors outside of iESE control, including but not limited to:

- 5.2.1 any environment issues of the Licensee affecting connectivity, including without limitation, the Licensee's telecommunications connection or any other Licensee software or equipment, the Licensee's firewall software, hardware or security settings, the



- Licensee's configuration of anti-virus software or anti-spyware or malware software, or an operator error of the Licensee;
- 5.2.2 any third-party software, hardware, or telecommunication failures, including internet slow-downs or security issues;
- 5.2.3 any Force Majeure Event;
- 5.2.4 issues related to third party domain name system (DNS) errors or failures;
- 5.2.5 scheduled maintenance of the Site of which iESE will give the Licensee reasonable advanced notice by email or other preapproved notification method.

Service Level

6.1 iESE cannot guarantee that the Services will be fault free. If a fault occurs in the Services, the Licensee should promptly report it via iESE's support desk at <https://carecubeddev.atlassian.net/servicedesk/customer/portals> and iESE shall use its reasonable endeavours to correct the fault as soon as reasonably possible, taking into account the severity of the issue.

6.2 All issues raised will be classified into one of four categories:

6.2.1 · Critical

6.2.2 · High

6.2.3 · Medium

6.2.4 · Low

6.3 The table below outlines the classification of Support incidents:



	Unavailable or cannot be reasonably used	Functioning but severely impaired	Functioning but not to documented acceptance criteria	Service Request or Change
All CareCubed Users	Critical	High	Medium	Enhancement Register
Some CareCubed Users (>20%)	High	Medium	Low	Enhancement Register

6.4 Response times are related to their assigned severity as follows:

Severity	Standard Response Time	Resolution Time
Critical	5 hours	1 day
High	1 day	2 days
Medium	2 days	3 days
Low	5 days	5 days
Enhancement Register	Discussed as part of iESE development meetings	N/A

6.5 The response time is the maximum time in which iESE will respond to the submitter acknowledging receipt of their issue. The actual response time will generally be much faster.



6.6 Achievement of these resolution times is subject to the issue being within iESE scope to resolve e.g., directly relating to the CareCubed system and functionality within it.

6.7 Where there is a major issue and the normal resolution time cannot be met, iESE will provide updates on the resolution of the issue daily or as otherwise agreed with the Licensee.

Support

7.1 iESE will deliver any contracted implementation services using appropriately skilled staff, at a time and place as mutually agreed by the Parties.

7.2 In the event of cancellation by the Licensee of implementation services less than one week before the scheduled time, iESE reserves the right to charge the Licensee for the implementation service as if it had taken place as planned.

7.3 The Licensee will provide 1st Line support to the Licensee's staff and any users granted place-based access by the Licensee. This includes:

7.3.1 Management of Licensee staff access to CareCubed;

7.3.2 Directing Licensee staff to CareCubed Documentation or otherwise answering basic "how to" queries; and

7.3.3 Ensuring Licensee staff understand how CareCubed fits into their work processes.

7.4 iESE will provide 2nd and 3rd line support via the CareCubed Helpdesk.

7.5 Helpdesk working hours are 9am-5pm Monday to Friday excluding English Bank Holidays.

7.6 The primary contact route for reporting issues or queries is online via the web form at <https://carecubeddev.atlassian.net/servicedesk/customer/portals> or via other channels as iESE may from time to time advise.

7.7 Faults will be dealt with as per paragraph 6 of this Agreement.

7.8 iESE support staff will use reasonable endeavours to answer queries raised by the Licensee or its staff regarding the use or application of CareCubed.



Testing

8.1 iESE will apply appropriate testing to CareCubed fixes and system enhancements.

8.2 At iESE's discretion, the Licensee may be invited to participate in user testing.

Warranty

9.1 iESE warrants that, at the time CareCubed is supplied, CareCubed will, when properly used, perform substantially in accordance with the description in the Documentation (provided that CareCubed is properly used and with the operating system for which it was designed as referred to in the accompanying documentation), and the Documentation correctly describes the operation of CareCubed in all material respects. This warranty period extends for the term of this Agreement.

9.2 If, within the Warranty Period, the Licensee notifies iESE in writing of any defect or fault in CareCubed in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from the Licensee having amended CareCubed or used it in contravention of the terms of this Agreement, iESE will, at its sole option, update CareCubed, provided that the Licensee make available all the information that may be necessary to assist iESE in resolving the defect or fault, including sufficient information to enable iESE to recreate the defect or fault.

9.3 The purpose of CareCubed is to act as a cost negotiation tool; it is not intended as a price-fixing tool. iESE is not held liable for the accuracy of information inputted by the Licensee or users of CareCubed.

9.4 The Licensee acknowledges that CareCubed has not been developed to meet the Licensee's individual requirements and that it is therefore the Licensee's responsibility to ensure that the facilities and functions of CareCubed as described in the Documentation and this Agreement meet the Licensee's requirements.



Liability

10.1 This paragraph 10 sets out the entire financial liability of the Parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

10.1.1 any breach of this Agreement however arising; and

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

10.2 Nothing in this Agreement shall limit or exclude the liability of either Party for:

10.2.1 fraud or fraudulent misrepresentation; or

10.2.2 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
or

10.2.3 breach of section 2 of the Consumer Protection Act 1987; or

10.2.4 the deliberate default or wilful misconduct of that Party, its employees, agents or subcontractors.

10.3 Without prejudice to paragraph 10.2, neither Party shall under any circumstances be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for any personal injury; loss of income; loss of business profits or contracts; business interruption; loss of the use of money or anticipated savings; loss of information; loss of opportunity, goodwill or reputation; loss of, damage to or corruption of data; or any indirect or consequential loss or damage of any kind howsoever arising; provided that this paragraph 10.3 shall not prevent claims for loss of, or damage to, tangible property of the Licensee or any other claims for direct financial loss that are not expressly excluded by this paragraph 10.3.

10.4 Subject to paragraphs 10.2 and 10.3, the maximum aggregate liability of each of iESE and the Licensee in any year under or in connection with this Agreement, or any collateral contract, whether in contract, tort (including negligence) or



otherwise, shall in all circumstances be limited to a sum equal to the annual licence price in that year as detailed in the Schedule.

10.5 Subject to paragraphs 10.2, 10.3 and 10.4, iESE shall indemnify the Licensee against any liability incurred by the Licensee as a result of any infringement of third-party intellectual property rights and incurred in connection with this Agreement provided that iESE's obligations under this paragraph shall not apply where and to the extent such liability is caused or increased by the Licensee's breach of this Agreement.

10.6 This Agreement sets out the full extent of iESE's obligations and liabilities in respect of the supply of CareCubed and the Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on iESE except as specifically stated in this Agreement. Any condition, warranty, representation or other term concerning the supply of CareCubed and the Documentation which might otherwise be implied into or incorporated in this Agreement, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

Insurances

11.1 Throughout the term of the Agreement, iESE shall maintain insurances to the level of:

11.1.1 Professional indemnity cover of £10,000,000;

11.1.2 Public and products liability cover of £10,000,000;

and

11.1.3 Employers' liability cover of £10,000,000.

Applicable Law

12.1 The Parties agree that the law of England and Wales will govern the performance and interpretation of this Agreement and any disputes arising under



it and submit to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.

Waiver

13.1 If iESE fail, at any time during the term of this Agreement, to insist upon strict performance of any of the Licensee obligations under this Agreement, or if iESE fail to exercise any of the rights or remedies to which iESE are entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve the Licensee from compliance with such obligations.

13.2 A waiver by iESE of any default shall not constitute a waiver of any subsequent default. No waiver by iESE of any of the terms of this Agreement shall be effective unless it is expressly stated to be a waiver and is communicated to the Licensee in writing.

Transfer of rights and obligations

14.1 This Agreement is binding on the Licensee and on iESE and on our respective successors and assignees. The Licensee may not otherwise transfer, assign, charge or otherwise dispose of this Agreement, or any of its rights or obligations arising under the Agreement, without the prior written consent of iESE, which will not unreasonably be withheld.

14.2 In the event of transfer to the Licensee's successor:

14.2.1 A revised fee may be payable in line with the standard price in force for the successor organisation; and

14.2.2 IESE reserve the right to terminate the Agreement.

14.3 IESE, subject to prior written notification, may transfer, assign, charge, sub-contract or otherwise dispose of this agreement, or any of our rights or obligations arising under it, at any time during the term of the Agreement.



Severability

15.1 If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining Agreement which will continue to be valid to the fullest extent permitted by law.

Term and Termination

16.1 This Agreement shall take effect on the date granted by iESE and shall continue until the Expiration Date, or termination of this Agreement, whichever is earliest.

16.2 At the Expiration Date the Licence shall be renewed automatically for an additional one year period or other period as may be agreed in writing unless the Licensee elects not to renew the Licence by giving notice of termination in writing at least 3 months before the Expiration Date.

16.3 The Licensee may terminate the Agreement at any time during its Term; however, the Licensee must pay all amounts due and owing before the termination is effective. The Licensee must pay for the remainder of the Term, and no refunds will be provided.

16.4 iESE may suspend the Licensee from using the Services if: (1) it is reasonably needed to prevent unauthorised access; (2) the Licensee fails to respond to a claim of alleged infringement under paragraph 5 within a reasonable time; (3) the Licensee does not pay amounts due under this Agreement in a timely manner; (4) the Licensee does not abide by the Acceptable Use Policy or the Licensee violates other terms of this Agreement. A suspension from the Services will apply to the minimum necessary part of the Services and will be in effect only while the condition or need exists. iESE will give notice to the Licensee before suspending the Licensee, except where iESE reasonably believes it needs to suspend immediately. iESE will give at least 7 days' notice before suspending for non-payment. If the Licensee does not fully address the reasons for the suspension within 60 days after being suspended, iESE may terminate this Agreement and delete the Customer Data with immediate effect.



16.5 Upon renewal of the Licence, this Agreement will terminate, and the Licence will thereafter be governed by the terms and conditions set forth in the Portal on the date on which the Licence is renewed (the “**Renewal Terms**”). If the Licensee does not agree to any Renewal Terms, the Licensee may decline to renew your Licence.

16.6 The appropriate Licence fee shall be payable for any period of extension to the Licence or renewal.

16.7 iESE reserve the right to increase prices by up to 5% per annum, which will be reflected in the renewal invoice value. Notification of increases will be provided no less than 4 months before the renewal date.

16.8 iESE reserve the right to charge a penalty for late payment of invoice, at a rate of 3% per annum above the Bank of England base rate in force at the invoice date.

16.9 iESE will review and may make reasonable amendments to the terms of the Licence from time to time. These changes will take effect on the next anniversary of the date on which the Licensee entered into this Agreement. iESE will give reasonable notice of any changes, which will be at least 4 months prior to the anniversary on which the changes will come into effect.

16.10 iESE may terminate this Agreement immediately on written notice to the Licensee if:

16.10.1 The Licensee commits a material or persistent breach of this Agreement or the Licence which the Licensee fails to remedy (if remediable) within 14 days after the service on the Licensee of written notice requiring the Licensee to do so; or

16.10.2 the Licensee (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt.



16.11 Upon termination of this Agreement for any reason:

16.11.1 all rights granted to the Licensee under this Agreement shall cease;

16.11.2 the Licensee must cease all activities authorised by this Agreement; and

16.11.3 the Licensee must immediately delete or remove CareCubed resources including any associated documentation from all computer equipment in the possession of the Licensee and provide a written undertaking that these actions have been taken. Notwithstanding this, the Licensee shall be entitled to retain their data exported from CareCubed prior to termination of this Agreement in accordance with its own data protection and retention standards.

Entire Agreement

17.1 This Agreement and any document expressly referred to in it constitute the whole agreement between the Parties and supersedes any previous arrangement, understanding or agreement between the Parties, relating to the Licence and the Documentation. The Parties acknowledge that, in entering into this Agreement, neither of the Parties relies on any statement, representation, assurance or warranty of any person (whether a party to this agreement or not) other than as expressly set out in this Agreement and any documents referred to in it.

17.2 Each of the Parties agrees that the only rights and remedies available to the Parties arising out of or in connection with a Representation shall be for breach of contract as provided in this Agreement.

17.3 Any amendments to this Agreement, including any terms that the Licensee is required by law to include in a contract for services, must be in writing and signed by both Parties.

17.4 Documents forming part of this Agreement are this Agreement and the Schedule.

