

Circadacare Terms & Conditions

Warranty Terms: the terms of the warranty specified in Schedule 3 as set out in the warranty policy provided by Circadacare at the time the relevant Goods are delivered.

Website: refers to Circadacare accessible from <https://circadacare.com/>

- 1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.8 A reference to writing or written includes faxes but not e-mail.
- 1.9 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.

2. BASIS OF CONTRACT

- 2.1 Customer may place an Order on the Supplier for the purchase of Goods, Services and/or Support Services from time to time. The Order constitutes an offer by the Customer to purchase either Goods, Services and/or User Subscriptions in accordance with this Agreement. Where an Order for Goods includes the purchase of User Subscriptions, the relevant Subscription Term shall be set out within the Order.
- 2.2 The Order shall only be deemed to be accepted on the Supplier's issuance of written acceptance of the Order.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the

Services and/or Goods described in them. They shall not form part of the Agreement nor have any contractual force.

- 2.4 These terms and conditions apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 calendar days from its date of issue.
- 2.6 All of these terms and conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.1 The Goods are particularised in Schedule 3.
- 3.2 The Supplier reserves the right to amend the description and/or specification of the Goods if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.3 Customer acknowledges and agrees that it is purchasing the Goods for its own use and shall have no right to re-sell any of the Goods without the Supplier's express prior written authorisation which may be withheld, delayed or conditioned at the Supplier's discretion.
- 3.4 The Goods shall be provided with the benefit of a warranty where specified in Schedule 3. The terms of the warranty shall be as set out in the Warranty Terms applicable for the Goods at the time of delivery of the Goods. Where no warranty is specified in Schedule 3 no warranty shall be provided.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
 - (a) each delivery of the Goods is accompanied by an emailed delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (the "Delivery Location") at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed upon confirmation of delivery from the delivery partner.
- 4.4 Any dates quoted for delivery of the Goods are approximate only and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If the Supplier fails to deliver the Goods, the Supplier shall be afforded a reasonable period of additional time to effect redelivery of the Goods. Where and to the extent that the Supplier fails to effect redelivery of the Goods within this reasonable period of additional time, the Customer may cancel its Order for the Goods (which have not been delivered) and the Supplier's sole liability shall be to refund the Customer any sums paid in advance by the Customer for Goods not delivered by the Supplier in accordance with this Agreement. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on delivery, and for a period of 5 (five) years from the date of delivery (warranty period), the Goods shall conform in all material respects with their description.
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice.
 - (c) the defect arises as a result of the Supplier following any drawing, design or specification for the Goods supplied by the Customer.
 - (d) the Customer alters or repairs or engages any third party to alter or repair such Goods without the written consent of the Supplier.
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of this clause 5 shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (d) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

7. USER SUBSCRIPTIONS

- 7.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 8.3 and clause 14.1, the restrictions set out in this clause 7 and the other terms and conditions of this agreement including without limitation the obligation at clause 15.4, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences and for the duration of the term of this Agreement, to:
- (a) permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations; and

(b) resell User Subscriptions to Subscribers.

7.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for his use of the Services and Documentation and that each Authorised User shall keep his password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- (e) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause (e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual;
- (g) if any of the audits referred to in clause (e) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph **Error! Reference source not found.** of **Error! Reference source not found.** within 10 Business Days of the date of the relevant audit; and
- (h) it shall ensure that all Authorised Users have been given access to a privacy policy and that the Customer has complied in all regards with the Data Protection Legislation for its use of the Services and to allow for the use of any data which the Supplier is entitled to use.

7.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;

- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

7.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties (other than Subscribers); or
- (d) subject to clause 27.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 7; or
- (f) introduce or permit the introduction of any Virus into the Supplier's network and/or information systems.

7.5 The Customer shall use all reasonable endeavours 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 the Supplier.

7.6 The rights provided under this clause 7 are granted to the Customer only, and shall not be considered granted to any affiliate, subsidiary or holding company of the Customer.

8. ADDITIONAL USER SUBSCRIPTIONS

8.1 Subject to clause 8.2 and clause 8.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph **Error! Reference source not found.**

of **Error! Reference source not found.** and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

- 8.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request [(such approval not to be unreasonably withheld)]. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within [NUMBER] days of its approval of the Customer's request.
- 8.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in paragraph **Error! Reference source not found.** of **Error! Reference source not found.** and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

9. SERVICES

- 9.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 9.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out by the Supplier in respect of which the Supplier will seek to provide at least 48 hours' notice; and
 - (b) unscheduled maintenance provided that the Supplier has used reasonable endeavours to immediately notify The Customer
- 9.3 The Supplier will, as part of the Services and at no additional cost to the Customer provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

10. CUSTOMER DATA

- 10.1 The Customer shall own all right, 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 all such Customer Data. Customer grants to the Supplier (and warrants that it has the right to grant such rights) a perpetual and irrevocable right to use the Customer Data and data derived therefrom for the Supplier's statistical and analytical purposes and Supplier will be free to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Supplier offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. In the event that Customer Data includes personal data, Supplier shall aggregate such personal data upon the expiry or termination of this agreement.

- 10.2 Customer acknowledges and agrees that Supplier does not back up Customer Data and whilst the Supplier shall use reasonable endeavours to maintain the security and integrity of any Customer Data, Customer agrees that Supplier shall not be responsible for and shall have no liability to Customer in respect of any loss, destruction, disclosure of and/or corruption of Customer Data whether caused by the Supplier or any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 10.9).
- 10.3 The Supplier shall, in providing the Services, comply with its [Privacy and Security Policy] relating to the privacy and security of the Customer Data available at [INSERT WEB ADDRESS] or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 10.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. The Customer shall ensure that it has provided all required information to Authorised Users or individuals whose data may be collected and obtained any consents that may be required for the use of personal data in accordance with this agreement.
- 10.5 The parties acknowledge that:
- (a) if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller, and the Supplier is the processor for the purposes of the Data Protection Legislation.
 - (b) The Supplier and Customer have entered into a Data Processing Agreement that sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
 - (c) the personal data may be transferred or stored outside the UK and the European Economic Area (EEA) or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement.
- 10.6 Without prejudice to the generality of clause 10.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.
- 10.7 Without prejudice to the generality of clause 10.4, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where the Supplier is relying on Applicable Laws as the basis for

processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer.

- (b) not transfer any personal data outside of the UK and EEA and the United Kingdom unless the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (d) notify the Customer without undue delay on becoming aware of a personal data breach;
- (e) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
- (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

10.8 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

10.9 The Customer consents to the Supplier appointing third-party sub-processors of personal data under this agreement, some of which sub-processors may be located outside of the UK and EEA . The Supplier confirms that it has

entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.

- 10.10 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

11. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

12. SUPPLIER'S OBLIGATIONS

- 12.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 12.2 The undertaking at clause 12.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier 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 12.1.
- 12.3 The Supplier:
- (a) does not warrant that:
 - (i) the Customer's use of the Services will be uninterrupted or error-free; or
 - (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements.
 - (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.

- 12.4 Neither the Application nor the Services are a substitute for medical advice or appropriate supervision, are provided for general information purposes only and do not offer advice (including medical advice) on which a Subscriber or any other person should rely;
- 12.5 Whilst the Supplier makes reasonable efforts to update the information provided by the Application and the Services the Supplier makes no representation and gives no warranty or other commitment as to the accuracy, reliability, availability, effectiveness, or correct use of information provided through the Application and/or Services;
- 12.6 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 12.7 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 12.8 Customer acknowledges and agrees on behalf of itself and each Subscriber that the Supplier may suspend and/or terminate the provision of the Services to the Customer and/or any Authorised User through the Application if: (a) Supplier reasonably believes that an Authorised User is in breach of any terms of this agreement or the provisions of the Subscription Licence Agreement; (b) the Customer or any relevant Authorised User does not co-operate with Supplier's reasonable investigation of any suspected violation of this agreement or the Subscription Licence Agreement; (c) there is an attack on the Services or the Services are accessed by or manipulated by a third party without the Supplier's consent; (d) Supplier is required by law to suspend the Services or an Authorised User's access to the Services; (e) there has been unauthorised or suspected fraudulent or suspicious activity relating to an Authorised User's use of the Services; (f) where Supplier reasonably believes that suspension of the Services is necessary to protect its or any other party's network, system, the Services or other customers. Supplier will use reasonable endeavours to give Customer advance notice of a suspension under this clause 12.8, unless Supplier determines in its reasonable commercial judgement that an immediate suspension is necessary to protect Supplier or its customers from imminent and significant operational or security risk or if to do so would be unlawful or Supplier has grounds to suspect fraudulent or any other form of criminal use of the Services. For the avoidance of doubt, any suspension of Services, unless caused directly by the Supplier, shall not suspend the Customer's obligation to pay the Subscription Fees.

13. CUSTOMER'S OBLIGATIONS

- 13.1 The Customer shall:
 - (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;

- (b) without affecting its other obligations under this agreement, 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, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and any applicable Subscription License Agreement and shall be responsible for any Authorised User's breach of this agreement or a Subscription License Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services, and to benefit from its rights under this agreement;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- (g) back-up content and data used with the Application on a daily basis;
- (h) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier'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; and
- (i) shall not, and use all reasonable endeavours to ensure that any third party who may access any Goods shall not, deconstruct, open or in any way tamper with the Goods in any manner that may allow the operation, basis of manufacture or any other information about the basis of construction or operation of the Goods to be determined. Further the Customer shall not, and shall use all reasonable endeavours to ensure that any third party shall not, attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Goods, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties.

14. **CHARGES AND PAYMENT**

- 14.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 14 and **Error! Reference source not found..**
- 14.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 19.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
 - (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period; and
 - (iii) on or at any time after completion of delivery in respect of Goods,
- 14.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 14.4 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause (b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 14.5 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 8.3, at the start of each Renewal Period upon 90 days' prior notice to the Customer and **Error! Reference source not found.** shall be deemed to have been amended accordingly.
- 14.6 The Supplier shall be entitled to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered or their specification; or

- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

15. PROPRIETARY RIGHTS

- 15.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 15.2 The Customer shall grant a limited, perpetual licence to the Supplier to use the analytical and statistical Content solely for analytical and statistical purposes.
- 15.3 The Supplier confirms that it has all the rights in relation to the Services 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.
- 15.4 The Customer shall ensure that each Subscriber executes and complies with the Subscriber Licence Agreement.
- 15.5 Nothing in this agreement gives either party a right to use the other party's name or any of the other party's trademarks, logos, domain names, other distinctive brand features, Documentation and Application are and will remain the exclusive property of the Supplier and/or its licensors.

16. CONFIDENTIALITY

- 16.1 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 other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 16.2 Subject to clause 16.4, each party shall hold the other's Confidential Information in confidence and 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 implementation of this agreement.
- 16.3 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.
- 16.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority

of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 16.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 16.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 16.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 16.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 16.8 The above provisions of this clause 16 shall survive termination of this agreement, however arising.

17. INDEMNITY

- 17.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Goods, Services and/or Documentation, provided that:
 - (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier 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.
- 17.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, 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) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 17.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

- 17.4 In no event shall the Supplier, 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 or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 17.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

18. LIMITATION OF LIABILITY

- 18.1 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Goods, Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier 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
 - (c) the Goods, Services and the Documentation are provided to the Customer on an "as is" basis.
- 18.2 Nothing in this agreement excludes the liability of the Supplier:
- (a) for death or personal injury caused by the Supplier's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 18.3 Subject to clause 18.1 and clause 18.2:
- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
 - (b) the Supplier's total aggregate liability (including in respect of the indemnity at clause 17.2), 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 the sum of the charges paid to the Supplier during the 12 months immediately preceding the date on which the claim arose.

19. TERM AND TERMINATION

19.1 This agreement shall, unless otherwise terminated as provided in this clause 19, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

19.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 (seven) days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 (thirty) days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (c) to clause (i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

19.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (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) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause (c), unless the Supplier receives, no later than ten 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. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 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). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

20. **FORCE MAJEURE**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, 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.

21. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

22. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

23. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

24. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25. SEVERANCE

25.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

25.2 If any provision or part-provision of this agreement is deemed deleted under clause 25.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. ENTIRE AGREEMENT

26.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

26.2 Each party acknowledges that in entering into this agreement it does not rely on and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

26.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

26.4 Nothing in this clause shall limit or exclude any liability for fraud.

27. ASSIGNMENT

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

27.2 The Supplier 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.

28. 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).

29. 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.

30. NOTICES

30.1 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 this agreement, or such other address as may have been notified by that party for such purposes or sent by fax to the other party's fax number as set out in this agreement.

30.2 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 fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

31. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

32. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of the document.

SCHEDULE 1– Goods Charges

Circadacare will supply the Customer with (e.g.) up to 5 bulbs to support each selected cohort, and can gain access to any of the additional devices below:

Circadacare kits will be based on the following items:

- Circadacare LED Bulb
- Circadare Router

This project has been capped at (price) (VAT Included) for the full (term)

Warranty: The standard 5 year warranty shall apply subject to the warranty policy. At the date of this Agreement the warranty terms are:

General Warranty Terms

Warranty terms:

5-year warranty period and terms are in force from the date of completion of installation and commissioning of the system. Circadacare request remote access facility for every installed Heleos device to facilitate support and regular online health checks which are carried out at no cost.

Warranty Policy

Circadacare offers a 5-year return to factory warranty that guarantees LED lighting products will be free from Manufacturing and Material defects, provided they are used in compliance with their intended use, for a period of 5 years from the warranty commencement date.

The product warranty shall only be valid provided that: The product is returned to Circadacare at Customers cost for necessary checks and works to be carried out. The repaired product will then be returned free of charge.

The product has been used in compliance with product/technical specification sheets, labels and catalogues current at the time of manufacture.

The product has been installed correctly in accordance with the installation guide and applicable legislation/standards.

Ambient temperature and voltage limits have not been exceeded.

The product is not installed or enclosed under insulating material.

Maintenance work has been carried out and documented.

The product was paid for in accordance with payment terms.

The Customer agrees and acknowledges that: Lumen depreciation is to be expected, and the warranty only applies to products failing to achieve the life values stated at the time of manufacture.

Circadacare reserve the right to inspect installed products prior to undertaking any warranty work.

Circadacare does not warrant that the product is fit for any particular purpose.

The warranty is offered exclusively to the original purchaser of the product.

A claim must be notified to Circadacare, in writing, within 7 working days of the manifestation of a perceived fault and the purchaser makes no further use of the product.

The warranty will be void immediately if the Customer or any third party makes changes to the product or attempts their own repair without written authorisation.

A replacement product may not be identical or use the exact components due to generation and technical advances.

A replacement product may affect the continuity of a lighting scheme.

The product warranty does not cover:

- Defects caused by unforeseen or unforeseeable events.
- Defects caused by power disturbances.
- Accidental damage or misuse.
- Any parts subject to wear and tear.
- Any transport or shipping costs associated to the defective product.
- Any costs resulting from work required to repair or access the defective product.
- Any consequential losses resulting from a defective product.
- Any re-commissioning associated with the product.

Circadacare reserves the right to freely decide at our own discretion whether to issue a credit, repair or replace a defective product with the same or similar product due to availability and technological progress. For the avoidance of any doubt, the repair or replacement product is to cover the unexpired period of the warranty.

Circadacare reserves the right to modify the specifications of the Heleos device and platform without prior notice, in adherence to our ongoing efforts for product enhancement and technological advancement. This is in accordance with our commitment to deliver superior quality and the most recent innovation to our customers.