

EVERYLIFE TECHNOLOGIES LIMITED
Services Terms and Conditions

These are the Services Terms and Conditions of **EVERYLIFE TECHNOLOGIES LIMITED** (company number 09233570) whose registered office and trading office is at A1 Ground Floor, East Wing, Cody Technology Park, Ively Road, Farnborough, GU14 0LX ("**everyLIFE**").

BACKGROUND

- (A) everyLIFE has developed certain software applications and platforms which it makes available to Customers on a SaaS basis, for the purpose of providing social care.
- (B) The Customer wishes to use everyLIFE's products and services in its business operations in accordance with the details set out in the Order Form.
- (C) Pursuant to acceptance and signature of the Order Form, everyLIFE agrees to supply the agreed Services to the Customer via the Platform, along with the provision of support and maintenance for the relevant Products on the terms set out in this agreement.
- (D) By signing the Order Form the Customer acknowledges that it has read, understood and agrees to the Terms and Conditions herein along with the terms of any additional EULAs related to any product or software downloads or installations.
- (E) The Order Form and the Terms and Conditions, together with any EULAs will together form a binding agreement between the parties (the / this "**agreement**").

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement and the schedules to it.

Additional Services: any other services that the Customer and everyLIFE may from time to time agree shall be supplied to, and paid for by, the Customer, by everyLIFE under the terms of this agreement, including of the type set out in Schedule 2;

Administration Fee: a 12.5% administration fee of each monthly Charges amount as charged for any payments not collected by direct debit;

Affiliate: includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party;

Annual Percentage Increase in CPI (Consumer Price Index): the most recently available annual percentage increase in CPI as reported by Office for National Statistics;

App(s): means the PASSforCare App, openPASS App and/or other apps as may be provided by everyLIFE as part of the Products from time to time;

Business Days: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Business Hours: 9:00am to 5:00pm during a Business Day;

Charges: the charges payable for the Services under this agreement, as set out in the Order Form, being (where the context so requires) each or any of the following: the charges for the Platform Services (according to the number of Client Subscriptions); any Implementation Fee; any charges agreed for Additional Services; any charges agreed for any further Products or Expansion Packs; any charges associated with data extraction or retention following the termination of this agreement - in each case as the same may be amended from time to time in accordance with the provisions of clause 6.6;

Client Subscriptions: the number of subscriptions purchased by the Customer for use in relation to the Customer's Clients.

Client User: any of the Customer's Client, or relative of the Customer's Client, or friend of the Customer's Client, or other person authorised by the Customer's Client, or appropriate legal representative, including but not limited as the user of the applicable App(s) that are enabled by the Customer;

Confidential Information: has the meaning given in clause 10;

Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be construed accordingly;

Critical Fault: a (reproducible) fault which substantially hinders or prevents the Customer from using a material part of the functionality of the Product in question;

Customer: the legal company, business or person identified on the Order Form;

Customer Data: the data inputted by the Customer, Customer Users, Client Users, or everyLIFE on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services, including but not limited to Personal Data;

Customer's Care Contract: a contract entered into between the Customer and the Customer's Client (or their representative) for the provision of care services by the Customer and/or its agents to the Customer's Client;

Customer's Client or Client: the person(s) with whom Customer contracts to provide its care services under the Customer's Care Contract;

Customer Manager: the person appointed by the Customer from time to time in order to fulfil the role described in clause 7.1;

Customer Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services, Platform and the Documentation;

Data Processing Agreement: the Data Processing Agreement entered into by the parties relating to the processing of Personal Data in connection with this agreement, as attached or as separately executed;

Data Protection Legislation: as defined in the Data Processing Agreement;

Documentation: the documents made available to the Customer by everyLIFE online via www.passgenius.com or such other web address notified by everyLIFE to the Customer from time to time, which includes various templates and other materials or instructions for use by Customer Users as part of the Services;

Effective Date: The date set out on the Order form or otherwise the date of signing of the Order Form;

Expansion Pack: any new software or functionality developed by or on behalf of everyLIFE which is publicly marketed and offered for purchase by

everyLIFE being such functions which expand the functions the Product(s) was able to perform above and beyond any Maintenance Releases or New Versions;

Fix: a resolution which satisfactorily resolves the reported reproducible fault as further described in Part 2 of Schedule 1 (Standard Support Service);

Implementation Cancellation Fee: 10% of the Implementation Fee;

Implementation Date: means the date the Implementation Services are originally scheduled to take place on whether or not this date is later altered by the Customer through rescheduling or cancellation;

Implementation Fee: means the sum payable as identified in the Order Form in respect of the Implementation Services;

Implementation Services: means the services required to set up or integrate the Services or Products as more formally identified in a statement of work and during the project kick-off call;

Initial Term: means the initial period as set out on the Order Form, being 12, 24 or 36 months, subject to any extended period agreed between the parties pursuant to clause 12;

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

Maintenance Release: a software release which corrects faults, adds functionality or otherwise amends or upgrades the Product(s), but which does not constitute a New Version;

New Version: any new version of the Product(s) which from time to time is publicly marketed and offered for purchase by everyLIFE in the course of its normal business, being a version which contains such significant differences from the previous versions;

NHS Service(s): any service(s) owned or developed by or on behalf of NHS (or other applicable NHS body) that are enabled in the Platform / Products by everyLIFE and may be offered from time to time to Customers who meet the Qualifying Criteria;

Non-Critical Fault: any reproducible fault in the Product(s) other than a Critical Fault;

openPASS App: everyLIFE's openPASS software application, for use by Client Users;

Open-Source Software: open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>);

Order Form: the order form signed by the Customer setting out the Customer's order for the applicable Services, along with other information such as Charges and payment details, which incorporates these Terms and Conditions (and any amendments thereto);

PASSforcare App: everyLIFE's PASSforcare software application, for use by Customer Users;

Personal Data: personal data as defined in the Data Protection Legislation;

Platform: the everyLIFE software / SaaS platform, Products, Documentation and other everyLIFE products via which certain of the Services are made available;

Platform Data: all usage and/or statistical or other data, information, learnings or know how related to and/or derived from the use of the Services or Platform by customers and users and their Customer Data, including machine learning and the development of algorithms or other models, only in anonymised and aggregated form, and at all times not including Customer Confidential Information;

Platform Service: means SaaS service and related functionality and tools provided by everyLIFE via the Platform allowing the Customer to access and use the Platform and related applicable Products;

Product(s): the products and modules that are available to be ordered by the Customer as part of the Platform Services, including related Apps, all Expansion Packs, as well as related Maintenance Releases and New Versions;

Qualifying Criteria: any of the conditions set by everyLIFE, NHS (or other applicable NHS body), or the applicable NHS Services provider, for the Customer to meet in order to access certain NHS Services that may be offered via the Products as part of this agreement;

Response: in relation to the Service Levels set out in Part 2 of Schedule 1, the target response timeframe of everyLIFE to a technical enquiry relating to the Service or Product(s);

Service Levels: those standards of performance to be achieved by everyLIFE in performing the Standard Support Service as set out in Part 2 of Schedule 1;

Services: includes (as appropriate) the Platform Service, Standard Support Service, Implementation Service, Updating Service and any Additional Services if applicable;

Specification: the description or specification of the Services and /or Product(s) provided by everyLIFE to the Customer via demonstration and / other product collateral;

Standard Support Service: the support service more particularly described in Part 1 of Schedule 1, which is to be provided by everyLIFE to the Customer;

Standard Support Hours: 09:00 to 17:00 Monday to Wednesday and 09:00 – 16:00 Thursday and Friday, except on days which are bank holidays in England, and not including out of hours support;

Subscription Term: has the meaning given in clause 12 (being the Initial Term together with any subsequent Renewal Periods as defined in clause 12);

Supported Device: a supported device of a minimum specification as set out on everyLIFE's help centre;

Support Manager: the person appointed by everyLIFE from time to time in order to manage certain of everyLIFE's obligations under this agreement;

Updating Service: the service to be supplied by everyLIFE to the Customer;

The headings in this agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this agreement.

1.2 Unless the context otherwise requires:

- (a) The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
 - (b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
 - (c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
 - (d) A reference to any party shall include that party's personal representatives, successors and permitted assigns.
 - (e) 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.
 - (f) 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.
 - (g) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.3 Words in the singular include the plural and those in the plural include the singular.
- 1.4 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 **Construction.** In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) a reference to **writing** or **written** includes e-mails.
- 2. SUPPLY OF SERVICES**
- 2.1 Subject to the signing and acceptance of the applicable Order Form by everyLIFE, and receipt of the relevant Charges, everyLIFE shall supply the Services (as further detailed in clause 3) to the Customer, during the Subscription Term, using reasonable care and skill, and in accordance with the applicable Specification, in all material respects.
- 2.2 everyLIFE shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and everyLIFE shall notify the Customer in any such change.
- 2.3 Access to the NHS Services will be enabled (as selected) in accordance with specification as set by NHS England (or other applicable NHS body) or another applicable NHS Services provider, subject to the Qualifying Criteria requirements. Neither everyLIFE nor the Customer shall have authority to change such specification unless expressly directed to do so by the NHS Services provider.
- 3. THE SERVICES and ACCESS TO PLATFORM**
- 3.1 everyLIFE shall supply, and the Customer shall take and pay for, during the Subscription Term, the following Services in accordance with the agreed Client Subscription level:
- (a) the Platform Service;
 - (b) the Implementation Service;
 - (c) the Standard Support Service;
 - (d) the Updating Service; and
 - (e) such of the Additional Services as are included from time to time within an order for Additional Services agreed between everyLIFE and the Customer.
- 3.2 In relation to the Platform Service:
- (a) to the extent necessary to facilitate access to and use of the Products, everyLIFE hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to access and use the Platform and the applicable Products, in relation to the provision of the Customer's care services to the agreed number of Customer's Clients as specified under the Client Subscription numbers, during the Subscription Term in accordance with any permission and restrictions set out in the agreement; and
 - (b) to the extent necessary, everyLIFE hereby grants to the Customer a non-exclusive, non-transferable right to permit the Customer Users to use the Products solely for the Customer's provision of its own care services to the Customer's Clients as above.
- 3.3 In relation to the Standard Support Service:
- (a) the Standard Support Service shall be provided during the Standard Support Hours and shall comprise:
 - (i) a UK based telephone help desk to provide first-line support to users of the Product(s);
 - (ii) remote diagnosis and, where possible, correction of faults using the software management software; and
 - (iii) outside the Standard Support Hours, everyLIFE will provide out of hours triaged support for Critical Faults which is accessible via telephone help desk. Non-Critical Faults raised out of hours will be addressed during the Standard Support Hours.
- all as more particularly defined in Part 1 of Schedule 1.

- (b) the Standard Support Service shall be provided materially in accordance with the Service Levels set out in Part 2 of Schedule 1. everyLIFE shall use all reasonable endeavours to meet any performance timescales specified, but any such timescales shall be estimates only and time shall not be of the essence for performance of the Services or support.
 - (c) if additional on-site support is required in any month it may be provided by everyLIFE at its option at such rates in place by everyLIFE at that time.
 - (d) where a Non-Critical Fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release everyLIFE may decline to provide assistance in respect of that Non-Critical Fault.
 - (e) everyLIFE reserves the right to amend the Standard Support Services on notice from time to time.
- 3.4 In relation to the Implementation Service, everyLIFE will endeavor to provide the agreed services by the Implementation Date, subject to any agreed changes or any delay as caused by the Customer, and / or failure by the Customer to commit resources to attend relevant training and other meetings to progress implementation.
- 3.5 In relation to the Updating Service:
- (a) everyLIFE shall issue Maintenance Releases of the Product(s) as and when required and in whatever form (including, in the case of Non-Critical Faults, by way of a local fix or patch of the Product(s) or a temporary by-pass solution) in the absolute discretion of everyLIFE;
 - (b) everyLIFE shall issue New Versions of the Product(s) as and when developed and in whatever form determined by everyLIFE;
 - (c) the Updating Service shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect any Maintenance Releases or New Versions acquired by the Customer;
 - (d) for the avoidance of doubt, the cost of the Updating Service is included in the Charges payable for the Platform Service, but excludes any sum payable by the Customer in respect of the licence of any Expansion Pack;
 - (e) if everyLIFE releases a New Version or Maintenance Release and the Customer decides not to acquire and install such New Version or Maintenance Release, that decision shall not give rise to any right to terminate this agreement, nor shall it enable the Customer to claim failure of the Services or the performance of everyLIFE's obligations under this agreement. However, if everyLIFE has released a New Version or Maintenance Release, and the Customer has not, within 6 months of everyLIFE's having notified the Customer that a New Version or Maintenance Release is available, acquired and installed that New Version or Maintenance Release, everyLIFE may terminate this agreement by giving one month's written notice to the Customer given at any time after the expiry of such period. Pending any such termination everyLIFE shall only be required to provide a minimum reasonable level of support for the legacy product version however all charges payable by the Customer will remain unchanged. EveryLIFE reserves the right to restrict access to the Products/ and or Platform if a Customer fails to implement recommended security updates or use Supported Devices.
- 3.6 The Customer may from time to time request everyLIFE to supply any Additional Services at such rates in place as at that date or as otherwise agreed. everyLIFE shall use its reasonable endeavours to comply with the Customer's request, but the Customer acknowledges that everyLIFE's ability to supply the Additional Services shall depend on the availability of appropriate resources at the time in question. Where everyLIFE agrees to provide Additional Services, such agreement shall be embodied in an order for Additional Services. Each order for Additional Services shall be made under, and shall incorporate, the terms of this agreement.
- 3.7 everyLIFE shall have no responsibility for any failure to provide the Services where faults arise from:
- (a) misuse, incorrect use of or damage to the Services or Products from whatever cause (other than any act or omission by everyLIFE), including failure or fluctuation of electrical power;
 - (b) failure to maintain the necessary environmental conditions for use of the Products, including use of devices with operating software that is no longer supported or are not Supported Devices;
 - (c) use of the Services or Products in combination with any equipment or software not provided by everyLIFE or not designated by everyLIFE for use with any Products, or any fault in any such equipment or software;
 - (d) relocation or installation of the Products by any person other than everyLIFE or a person acting under everyLIFE's instructions or having the Services or Products maintained by a third party;
 - (e) any modification not authorised by everyLIFE resulting in a departure from the Specification;
 - (f) operator error; or
 - (g) any breach of the Customer's obligations under this agreement howsoever arising.
- 3.8 everyLIFE shall use commercially reasonable endeavours to make the Platform Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 23:00 to 01:00 UK time (the "Maintenance Window"); and
 - (b) unscheduled maintenance performed outside of Business Hours, provided that everyLIFE has used reasonable endeavours to give the Customer notice in advance.
- 3.9 During the Maintenance Window, out of hours support will be available, however only limited rectification steps will be able to be taken during the Maintenance Window.
- 3.10 everyLIFE shall not be liable for any losses howsoever incurred by the Customer during the Maintenance Window and furthermore, it is the Customer's sole responsibility to instigate a contingency plan to cover such Maintenance Window.
- 3.11 In the normal course of events, everyLIFE will give 24hrs notice of intention to use the Maintenance Window but no less than at least 6hrs

4. CLIENT SUBSCRIPTIONS, USERS and RESTRICTIONS

- 4.1 The number of permitted Clients with whom the Customer may use the Platform is the agreed number of Client Subscriptions as set out in the Order Form. For the duration of the Initial Term the number / level of Client Subscriptions selected by the Customer cannot be altered to a lower band. For the avoidance of doubt, a decline in client numbers mid- contract, will not entitle the Customer to a revision in Charges payable to everyLIFE. The Customer may at any time increase the band of Client Subscriptions. In the event of an increase in client numbers, the Customer shall pay the increased Charges in accordance with clause 6.
- 4.2 During subsequent Renewal Periods, the Customer may alter the number of Client Subscriptions to take effect at the next Renewal Period and the Customer shall pay such revised Charges in accordance with clause 6.

4.3 In relation to the Client Users the Customer undertakes that:

- (a) each Client User shall be provided with unique user credentials and keep a secure password for their access to the Product functionality in accordance with the Customer's Care Contract as applicable, and that such password shall comply with everyLIFE's password policy, and that the Client User password shall be changed as frequently as deemed necessary, including after actual/ suspected account password compromise, and will procure that each Client User shall keep their password confidential. Use of generic logins and sharing of passwords shall constitute a breach of this clause and may result in removal of access and / suspension of the Services.
- (b) it shall maintain a written, up to date list of current Client Users and notify everyLIFE of any increases.

4.4 The Customer shall not and shall procure that no Customer User or Client User shall not, access, store, distribute or transmit any viruses, and Customer shall maintain at all times adequate virus protection software with areputable provider.

4.5 The Customer shall not and shall procure that each Customer User or Client User shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) 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 Services, Platform or Products, and/or Documentation (as applicable) in any form or media or by any means;
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform or Products;
- (b) access all or any part of the Services, Platform, Products and/or Documentation in order to build a product or service which competes with the Services and/or everyLIFE;
- (c) use the Services, Platform, Products and/or Documentation to provide services to third parties, or license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Platform, Products and/or Documentation available to any third party except as specifically permitted hereunder;
- (d) attempt to obtain, or assist third parties in obtaining, access to the Services, Platform, Products and/or Documentation, other than as provided under this clause.

4.6 Any third party found to have been granted access by the Customer without prior approval by everyLIFE will have their access disabled and everyLIFE will have the right to claim for any losses or damages incurred as a result of such third party unauthorized access from the Customer.

4.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Platform, Products and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify everyLIFE.

4.6 In the event that the Customer makes available the Apps for the Client Users or otherwise provides applicable access to elements of the Products, the Customer hereby acknowledges use of the Apps or other applicable elements of the Products by any Client Users is subject to the relevant App end user licence agreement (EULA) set out as set out in App / Product.

4.7 The rights provided under this agreement are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer without the prior written consent of everyLIFE.

5. AUDITS

5.1 The Customer shall allow everyLIFE to undertake audit of the use of the Services and Platform for verification that the Services are being used and all obligations of the Customer are being performed in accordance with this agreement.

5.2 Notwithstanding the above, such audit may include:

- (a) verification that the Customer's system protects the integrity, operational availability, confidentiality and security of the Customer Data;
- (b) verification of the number of Client Subscriptions;
- (c) review of the user Customer Users and or Client Users;

5.3 everyLIFE shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Customer or delay the provision of the Services by everyLIFE and that, where possible, individual audits are coordinated with each other to minimise any disruption.

5.4 Subject to the Customer's confidentiality obligations, the Customer shall provide everyLIFE (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

5.5 Such audit may be conducted no more than once per quarter, and everyLIFE shall provide at least 7 days' notice of its intention to conduct an audit unless such audit is conducted in respect of asuspected fraud, in which event no notice shall be required.

5.6 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause unless the audit identifies a material breach of this agreement by the Customer, in which case the Customer shall reimburse everyLIFE for all its reasonable costs incurred in the course of the audit.

5.7 If an audit identifies that the Customer has failed to perform its obligations under this agreement then, without prejudice to the other rights and remedies of everyLIFE, the Customer shall take the necessary steps to comply with its obligations at no additional cost to everyLIFE.

5.8 If an audit identifies that the number of Client Subscriptions is higher than the agreed number / level, then the Customer shall pay to everyLIFE the sum that would have been payable to everyLIFE in respect of the additional Client Subscriptions for the duration of the Subscription Term, within 10 Business Days of the date of the relevant audit.

6. CHARGES AND PAYMENT

6.1 The Customer shall pay the Charges in advance by monthly direct debit to everyLIFE in accordance with this clause and the Order Form. However Implementation Charges will be paid in full in advance or as set out in the Order Form.

6.2 Unless as expressly agreed and set out within the Order Form, in the event that the Customer elects to pay any of the Charges by any method other than direct debit, the Customer shall pay:

- (a) the Administration Fee; and

- (b) each invoice within 5 Business Days after the date of such invoice.
- 6.3 If everyLIFE has not received payment (however due) within 10 (ten) Business Days of the due date, and without prejudice to any other rights and remedies of everyLIFE:
 - (a) everyLIFE may, without liability to the Customer, disable the Customer's password and account and suspend access to all or part of the Services, and everyLIFE 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 4% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.4 All amounts and fees stated or referred to in this agreement:
 - (a) shall be payable in pounds sterling;
 - (b) are non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to everyLIFE's invoice(s) at the appropriate rate.
- 6.5 The Customer shall pay all amounts due under this agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 6.6 everyLIFE shall reserve the right to increase the Charges in the following circumstances:
 - (a) every 12 months to reflect an inflationary increase. The Charges can increase by a maximum of the Annual Percentage Increase in CPI;
 - (b) quarterly, where the number of Clients under the Client Subscription number increases, causing the Customer to require uplift to a new subscription level.
 - (c) on release and or upgrade to any new features/modules and/or additional Products;
 - (d) at the start of any Renewal Period.
- 6.7 everyLIFE may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by everyLIFE to the Customer.
- 6.8 Notwithstanding the above, the Implementation Fee is non-refundable and in the event any aspects of the Implementation Services cannot be delivered by everyLIFE due to the rescheduling or cancellation of such services by the Customer then the Customer shall pay: the Implementation Cancellation Fee in the event that the cancellation or rescheduling occurs within 3 (three) weeks prior to the Implementation Date; an additional fee of £150.00 or accrued expenses in the event that the cancellation or rescheduling occurs within 1 (one) week of the Implementation Date.

7. THE CUSTOMER'S RESPONSIBILITIES, WARRANTIES and INDEMNITIES

- 7.1 The Customer shall:
 - (a) co-operate with everyLIFE in performing the Services and provide any assistance or information as may reasonably be required by everyLIFE, including in relation to the diagnosis of any faults, including nominating a manager ("**Customer Manager**") to be available to liaise with, and respond to queries from, the Support Manager;
 - (b) act at all times in relation to the use of the Services, including implementation and operation of the Products and related services, with all reasonable care and skill, and Customer recognises that in order for everyLIFE to perform the Services properly, efficiently and effectively, and for everyLIFE to meet its own obligations under the agreement, the Customer will be required to cooperate and coordinate reasonably and in good faith with everyLIFE;
 - (c) comply with all applicable laws with respect to its activities under this agreement;
 - (d) obtain and shall maintain all necessary licences, consents, and permissions necessary, in relation to its Customer Users and Client Users and all Customer Data, for everyLIFE, its contractors and agents to perform their obligations under this agreement;
 - (e) be responsible for all terms and conditions and privacy notices in relation to the Client Users' access to and use of the Products and will ensure that the terms and conditions will pass through all relevant conditions and restrictions herein;
 - (f) have responsibility for procuring and utilising the technology infrastructure and connectivity that will enable it to receive the benefit of the Services (including as required for access to the Platform)
 - (g) report faults promptly to everyLIFE;
 - (h) use the Services and Products as intended by everyLIFE and follow all guidance for use as described in training and other provided resources materials, including but not limited to the product Help Centre;
 - (i) verify the accuracy of personal information that it requires a third-party roster provider to make available in the Products via any integration between the systems that they request. Incorrect Personal Data that is transferred into the Products by a third-party roster provider will be deemed a data incident of the relevant roster partner;
 - (j) minimize security risks by implementing appropriate technical and organisational measures including, inter alia, taking up software updates as they become available and ensuring that the Customer and its employees are using supported versions of the relevant operating systems. EveryLIFE reserves the right to suspend the Services if the Customer fails to implement security measures as advised to minimize risk. The Charges remain payable during any such suspension of the Services;
 - (k) ensure that all devices used in connection with the Platform or Services are Supported Devices.
- 7.2 The Customer shall not and shall procure that no Customer User or Client User shall, access, store, distribute or transmit or any material (including but not limited to Customer Data) during the course of its use of the Services or Products 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;
 - (f) infringes any third party rights, including Intellectual Property Rights and/or privacy / confidentiality rights; or
 - (g) in a manner that is otherwise illegal or causes damage or injury to any person or property.

- 7.3 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the Customer Data, including but not limited to the legality, reliability, integrity, accuracy and quality of the Customer Data. In the event of any loss or damage to Customer Data, everyLIFE will use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by everyLIFE, or any third party appointed by everyLIFE for the purposes of this contract. everyLIFE shall not be liable for any loss, destruction, alteration or disclosure of Customer Data caused by any third party outside of the control or responsibility of everyLIFE.
- 7.4 The Customer acknowledges that:
- (a) it is exclusively responsible for:
 - (i) selecting the Products within the Services, and reviewing any new Maintenance Releases or New Versions in accordance with clause 3.5;
 - (ii) ensuring that the staff of the Customer are trained in the proper use and operation of the Services and Products;
 - (iii) ensuring the security, completeness and accuracy of all Customer Data;
 - (iv) the selection, use of and results obtained from the Services and Platform and any other programs, equipment, materials or services used in conjunction with the Services;
 - (v) the selection and use of any third party products or suppliers made available through the Platform or Services, and for the avoidance of doubt such access is without recommendation or endorsement and it is at the Customer's own risk;
 - (vi) all acts or omissions of the Customer Users and /or Client Users.
 - (b) it is in a better position than everyLIFE to assess and manage its risk in relation to use of the Services;
 - (c) it has had the opportunity to review and/or sample or assess the Product and the Platform and accepts responsibility for the selection of the Products and Services to achieve its intended results.
 - (d) everyLIFE is not providing any legal advice or warranties in relation to legal compliance functions that may be made available through the provision of the Services including but not limited to HMRC compliance and National Minimum Wages outputs and calculations. The Customer is exclusively responsible for the legal compliance of its own operations and services.
- 7.5 The Customer shall indemnify everyLIFE against any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against everyLIFE as a result of the Customer's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

8. EVERYLIFE'S WARRANTIES and INDEMNITIES

- 8.1 everyLIFE represents and warrants to the Customer that:
- (a) the Services will be performed and Products supplied:
 - (i) in accordance with all applicable laws and regulations; and
 - (ii) with all reasonable skill and care; and
 - (iii) materially in conformity with the Specifications.
 - (b) to the best of its knowledge and belief, the Services and Products will not infringe the UK Intellectual Property Rights of any third party; and
 - (c) at the date of this agreement, everyLIFE has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for everyLIFE to perform the Services and provide the Products.
- 8.2 If, during the term of this agreement, everyLIFE receives written notice from the Customer of any breach by everyLIFE of the representations and warranties contained in clause 8.1, everyLIFE shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, provide the Customer with an alternative means of accomplishing the desired performance, or terminate this agreement on written notice to the Customer and repay to the Customer pro rata sums which the Customer has pre-paid to everyLIFE under this agreement, less the charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable everyLIFE to comply with its obligations under this clause. Subject to the third party indemnity in clause 8.4, this clause sets out the Customer's sole remedy and everyLIFE's entire liability for breach of clause 8.1.
- Notwithstanding the foregoing:
- (a) everyLIFE does not warrant that the Customer's use of the Services, Platform and Products will ensure the Customer achieves any specific legal or regulatory compliance standards or produce any specific business or regulatory benefits, have any particular effectiveness nor create any revenue or savings;
 - (b) any warranties shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to everyLIFE's instructions, or modification or alteration of the Services by any party other than everyLIFE or everyLIFE's duly authorised contractors or agents;
 - (c) everyLIFE does not warrant that the Customer's use of the Services, Platform and Products will be uninterrupted or error-free, or that the Services, Products, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (d) everyLIFE 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, Platform, Products and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
 - (e) all dates supplied by everyLIFE for the delivery of the Products or the provision of Services shall be treated as approximate only, no representation or warranty is given by everyLIFE that all faults will be fixed, or will be fixed within a specified period of time, and everyLIFE shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond any approximate or target dates.
 - (f) the Customer acknowledges that any Open-Source Software provided by everyLIFE is provided "as is" and expressly subject to the disclaimer in this clause.
- 8.3 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

- 8.4 everyLIFE shall indemnify the Customer against any reasonable third party losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer under a third party claim (a “**Claim**”) as a result of everyLIFE's breach of this agreement howsoever arising, or any negligent or wrongful act of everyLIFE, its officers, employees, contractors or agents.
- 8.5 The indemnity in clause 8.4 is conditional on the Customer:
- (a) as soon as reasonably practicable, giving written notice of the Claim to everyLIFE, specifying the nature of the Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of everyLIFE (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) giving everyLIFE and its professional advisers at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable everyLIFE and its professional advisers to examine them and to take copies (at everyLIFE's expense) for the purpose of assessing the Claim; and
 - (d) subject to everyLIFE providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as everyLIFE may reasonably request to avoid, dispute, compromise or defend the Claim.
- 8.6 Notwithstanding any other provision in this agreement, everyLIFE's liability under this agreement shall not apply to the extent that any claim or action arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software incorporated into the Platform or Products or through the breach of any third-party licence relating to any Open-Source Software so incorporated howsoever arising.
- 8.7 Notwithstanding any other provision in this agreement, everyLIFE's liability under this agreement as a whole shall not apply to the extent that any claim or action arises directly or indirectly through the possession, use, development, modification or maintenance of the Services, (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Services, Platform and Products, in combination with any hardware or software not supplied or specified by everyLIFE, if the infringement would have been avoided by the use of the Services, Platform and Products not so combined, or use of a non-current release of the Products.

9 LIMITS OF LIABILITY

- 9.1 Except as expressly stated in clause 9.2:
- (a) everyLIFE shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - (i) indirect, consequential or special damage, even though everyLIFE was aware of the circumstances in which such damage could arise;
 - (ii) loss of profits;
 - (iii) loss of anticipated savings;
 - (iv) loss of business opportunity;
 - (v) loss of goodwill;
 - (vi) loss of, or damage to (including corruption of), data.
 - (b) the Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement, or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations, and (in either case) everyLIFE shall not in any circumstances have any liability otherwise than in accordance with the express terms of this agreement;
 - (c) the total liability of everyLIFE, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract shall in no circumstances exceed a sum equal to the total Charges paid in relation to the Platform Services in the previous 12 months.
- 9.2 Neither party excludes liability for:
- (a) death or personal injury caused by the negligence of everyLIFE, its officers, employees, contractors or agents;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 Supply of the Goods and Services Act 1982; or
 - (d) any other liability which cannot be excluded by law.
- 9.3 All references to everyLIFE in this clause shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of everyLIFE and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, notwithstanding clause 27.

10. CONFIDENTIALITY AND PUBLICITY

- 10.1 Each party shall, during the term of this agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law, court, regulator or supervisory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates (**Confidential Information**), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 10.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may

elect to bring against any person.

- 10.3 The terms of this agreement may not be disclosed by the Customer (other than to its legal advisors) without the prior written consent of everyLIFE.
- 10.4 everyLIFE may refer to the Customer as being a Customer of everyLIFE in customer reference lists, sales presentations, marketing, PR and other sales and promotional materials.
- 10.5 The provisions of this clause shall remain in full force and effect notwithstanding any termination of this agreement.

11. DATA PROTECTION

- 11.1 The parties will execute and comply with the Data Processing Agreement which will apply to any processing of Personal Data under this agreement.
- 11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.3 everyLIFE may use anonymised data to advance improvements in health and social care quality and contribute to relevant public health promotion initiatives. This does not remove everyLIFE from any data protection and security obligations in handling such data where the Data Protection Legislation applies.
- 11.4 The Customer acknowledges that everyLIFE will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which everyLIFE carries out under this agreement. As Data Controller, the Customer is responsible for ensuring that it implements necessary Information Governance policies and procedures in respect to use of the Services including, inter alia, where the Customer allows Bring Your Own Device (BYOD), a robust BYOD management policy that ensures the removal of any personal identifiable information including, inter alia photographic images that may be captured on devices used by the Customer's employees, or others authorized by the Customer to use the Services.
- 11.5 Where the Customer has enabled any NHS Service for access within the Products, they are responsible for updating their privacy notice accordingly and to comply with the Qualifying Criteria for using such NHS Services as well as the relevant NHS Service declaration form which, where required, will be provided by everyLIFE as part of implementation. This service depends upon both everyLIFE and the Customer using the NHS Service appropriately. Both NHS England and everyLIFE reserve the right to independently remove this feature from individual Customer use at our discretion and without prior notice.
- 11.6 Notwithstanding the prohibition on assignment under clause 17.1, and the termination right on change of Control under clause 13.1, Customer shall notify everyLIFE in writing at least 28 days in advance in the event of an anticipated sale of their care business such that they cease to be the Data Controller of the Personal Data processed in the Platform to enable everyLIFE to enter into discussions with any new owner in relation to service requirements and data protection issues with a view to enabling continuity of care provision for Customer's Client.

12. DURATION

- 12.1 This agreement shall, unless terminated in accordance with this clause, commence on the Effective Date and shall continue for the Initial Term. For the avoidance of doubt, the agreement becomes legally binding as of the Effective Date with no cooling off or trial period, including during or after implementation, and will continue for the whole of the Initial Term in any event.
- 12.2 Changes to the Implementation Date as caused by the Customer, and / or failure by the Customer to commit resources to attend relevant training and other meetings to progress implementation shall not change the Effective Date.
- 12.3 At the end of the Initial Period this agreement shall be automatically renewed for successive periods of 12 months rolling ("Renewal Period"), unless:
 - (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Period in which case this agreement shall terminate upon the expiry of the Initial Period or then Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of this agreement; and
 - (c) the Initial Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

13. TERMINATION

- 13.1 Without limiting its other rights or remedies and notwithstanding clause 12, either party may terminate this agreement with immediate effect by giving written notice to the other party if (in accordance with Notice provision in clause 29):
 - (a) the other party commits a material breach of any term of this agreement and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of being notified in writing to do so;
 - (b) 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;
 - (c) 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 (where a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction of the relevant party;
 - (d) 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 the other party other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction of the relevant party;
 - (e) 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 its assets and such attachment or process is not discharged within 10 (ten) Business Days;
 - (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 the other party has become entitled to appoint or has appointed an

administrative receiver; 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;

- (h) 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 13.1(b) to clause 13.1(g) (inclusive);
 - (i) in the case of termination rights for everyLIFE only, the Customer is subject to a change of Control;
 - (j) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (k) the other party's financial position deteriorates to such an extent that in the relevant party's reasonable opinion the other party's capability to adequately fulfil its obligations under this agreement has been placed in jeopardy.
- 13.2 Without limiting its other rights or remedies, everyLIFE may terminate this agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 10 Business Days after being notified in writing to do so.
- 13.3 Without limiting its other rights or remedies, everyLIFE may suspend provision of the Services under this agreement or any other contract between the Customer and everyLIFE if the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(g), or everyLIFE reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this agreement on the due date for payment.
- 13.4 For the purposes of this clause **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from: a substantial portion or element of this agreement over the term of this agreement and/or the terminating party's ability to continue to perform its obligations properly, efficiently and economically. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

14. EFFECT OF TERMINATION

- 14.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 14.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including the relevant parts of clauses 1, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, and 16-32 (inclusive) shall remain in full force and effect.
- 14.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 14.4 Notwithstanding its obligations in this clause, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 14.5 On termination of this agreement for any reason, the Customer's right to receive the Services shall cease automatically and each party shall as soon as reasonably practicable:
- (a) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, materials, access credentials, or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by its director) no later than 10 (ten) Business Days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 10);
 - (b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.
- 14.6 On termination of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to everyLIFE. everyLIFE shall submit to the Customer, invoices for any Services that it has supplied, or is due to supply to the end of this agreement but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt. For the avoidance of doubt, in the event of any change of Control of the Customer or sale or transfer of the relevant business of the Customer to a third party, subject to any further agreement under the consent to assignment provisions in clause 17.1, everyLIFE will be entitled to invoice for all remaining Charges applicable to the balance of the agreement, whether or not then invoiced.
- 14.7 On giving notice of termination the Customer has the responsibility for determining the arrangements for retaining data in accordance with both their responsibilities as Data Controllers under the provisions of GDPR and the requirements of the Care Act (2014).
- 14.8 Data retention options available to the Customer are as follows:
- (a) The Customer Data may be retained within the Platform as a legacy solution and on a single licence access basis for maximum period of 8 years at a rate of 10% of the annual fees then currently payable at termination, such licence access fee to be paid annually in advance. The Customer will also have access to and support from everyLIFE's customer support team as required on a pay as you go basis at the rate applicable at such time as support is requested. Data may be returned to the Customer for retention in machine readable format, as defined by the portability provisions in the GDPR, and everyLIFE will provide this to the Customer for a flat fee of £1,500 plus VAT.
 - (b) The Customer may retain data in hard copy and to facilitate this everyLIFE permits the Customer a period of 30 days following the date of termination to save or print whatever data they require, at which point the Customer must confirm in writing that data may be deleted from the Platform.
 - (c) The Customer may have their data deleted, or otherwise destroyed by everyLIFE.
- 14.9 On giving notice the Customer should notify everyLIFE which of the above options they wish to invoke. In the absence of notification by the Customer option a will be put into effect by everyLIFE, and the Customer will be charged for retention of data for 8 years.
- 14.10 The Customer may enter into a separate contract with everyLIFE to retain their data past the termination of this agreement.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 All Intellectual Property Rights in the Services, Platform, Products and Platform Data shall belong to everyLIFE, and the Customer shall have no rights in respect of any of the Services, Platform, Products and Platform Data except as expressly granted under this agreement.
- 15.2 The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as everyLIFE may from time to time require for the purpose of giving everyLIFE the full benefit of the provisions of clause 15.1.

16. FORCE MAJEURE

- 16.1 For the purposes of this agreement, **Force Majeure Event** means an event beyond the reasonable control of a party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the relevant party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, cyber attack, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.
- 16.2 A party shall not be liable to the other party as a result of any delay or failure to perform its obligations under this agreement as a result of a Force Majeure Event.
- 16.3 If the Force Majeure Event prevents a party from providing any of the Services for more than 6 (six) weeks, the affected party shall, without limiting its other rights or remedies, have the right to terminate this agreement immediately by giving written notice to the other party.

17. ASSIGNMENT AND SUBCONTRACTING

- 17.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights or obligations under this agreement without the prior written consent of everyLIFE (such consent not to be unreasonably withheld or delayed).
- 17.2 everyLIFE may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Customer.
- 17.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.4 A party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause shall be made until notice of the identity of the proposed assignee has been given to the other party.

18. NON-SOLICITATION

The Customer shall not, for the duration of this agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of everyLIFE who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this agreement to leave the employment of everyLIFE.

19. EXPORT

- 19.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 19.2 Each party undertakes:
 - (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

20. THIRD PARTY PROVIDERS

- 20.1 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/or their websites and that it does so solely at its own risk. everyLIFE makes no representation 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, 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 is between the Customer and the relevant third party, and not everyLIFE.
- 20.2 everyLIFE recommends that the Customer refers to the third party's terms and conditions and privacy policy prior to using the relevant third-party.
- 20.3 everyLIFE does not endorse or approve any third-party nor the content of any of the third-party website or service made available via the Services.
- 20.4 everyLIFE may, from time to time refer to third party research and information. At no time does everyLIFE warrant the reliability of such information

21. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

22. 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.

23. ENTIRE AGREEMENT

- 23.1 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.
- 23.2 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.
- 23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

24. VARIATION

This agreement may be updated from time to time. Variation of this agreement shall be considered effective once notified to the party. By signing these terms, the Customer also agrees to be bound to subsequent updates to the terms as notified to them directly and /or via updates to these terms as reflected on our website.

25. SEVERANCE

- 25.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 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 invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. COUNTERPARTS

- 26.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 26.2 Transmission of the executed signature page of a counterpart of this agreement by (a) fax or (b) e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 26.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

27. THIRD-PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

28. NO PARTNERSHIP OR AGENCY

- 28.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 28.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

29. NOTICES

- 29.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
 - (a) delivered by hand or by pre-paid first-class post or other next working day delivery (if a company) at its registered offices with a copy to its principal place of business (in any other case);
 - (b) Sent by email with delivery and read receipt to the key contact at the other party with a copy in the case of each party to the contact details set out on the Order Form.
- 29.2 Any notice or communication shall be deemed to have been received:
 - (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service.
 - (c) if sent by email at 9.00 am on the next Business Day after transmission.
- 29.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall include e-mail.

30. DISPUTE RESOLUTION

- 30.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.
- 30.2 If any disagreement or difference of opinion arises out of this agreement, the matter shall be disposed of as follows:

- (a) the Customer Manager and the Support Manager shall attempt resolution within 10 (ten) Business Days of the date on which either party raised the concern, or should they not be able to resolve the matter with 10 (ten) Business Days; then
 - (b) the matter shall promptly be referred by either party to a director of the Customer and a director of everyLIFE for immediate resolution.
- 30.3 If, within 10 (ten) Business Days of the matter first having been referred to the final level of escalation no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.
- 30.4 For the avoidance of doubt, this clause shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

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 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).

Schedule 1 Standard Support Service

Part 1. Description

everyLIFE's Standard Support Services package for of the Products includes the following elements:

- general system queries and advice;
- fault diagnosis;
- remedy of software faults;
- provision of fixes and patches;
- support call tracking and analysis; and
- provision of an online help facility with product guides, articles, frequently asked questions and access to updates on such queries from the Support and Customer Services team.

Provision of services shall be conditional upon the Customer having:

- provided such information as may be reasonably expected in respect of any malfunction in the software;
- incorporated all amendments and software updates as issued by everyLIFE;
- not otherwise changed the software which is not in accordance with the operating instructions, and
- provided full access to enable everyLIFE to access your system without attending site, under such security arrangements as agreed between the parties.

The expectation is that users have received sufficient training to enable them to be competent in the use of the Products. The level of assistance provided to a user will be up to the level of training which that user has completed. If the level of support required is higher than the training that the user has received then the query should be referred to a member of your organisation who has received the appropriate level of training. Repetitive requests in respect of an issue on which everyLIFE has already advised a solution may incur additional charges.

Note: The above service offering excludes such services referred to in Schedule 2, (defined as Additional Services) which are available from everyLIFE upon request. Please contact your account manager for a quotation:

Part 2. Service Levels

Category Level	Impact	Definition	Response	Target Resolution Time
1	Critical	Non-availability and total loss of service to the Customer due to failure of the Product.	2 Business Hours	4 Business Hours
2	Material	A limited repeatedly occurring loss of service availability to the Customer, affecting usage and operational risk.	4 Business Hours	8 Business Hours
3	Important	Reduced service availability which does not create operational risk of the Customer.	8 Business Hours	4 Business Days
4	Cosmetic	A fault of a cosmetic nature and of no immediate consequence which does not affect the use of the application or service availability of the customer	2 Business Days	3 months or next release, whichever is the sooner

1. For the purposes of clarification, a response is deemed to have been delivered when:
 - (a) during a telephone support call only and subject to Customer availability, the receipt of a new Support incident has been formally acknowledged to the Customer. Otherwise, an automated response to an email or incident logged via everyLIFE's website constitutes a Response;
 - (b) that Support incident has been assigned a unique reference number that has, subject to Customer availability, been communicated to the Customer;
 - (c) that Support incident has been assigned a Category Level 1, 2, 3 or 4 that has, subject to Customer availability, been communicated to the Customer. This will be an initial priority until a technical appraisal of the Support incident has been completed.

2. For the purposes of clarification a resolution is deemed to have been delivered when an everyLIFE representative has been consulted and has provided you with any of the following:
- (a) a Fix;
 - (b) an appropriate workaround has been identified and communicated to you and the timing of a Fix has been mutually agreed between the parties (such agreement not to be unreasonably withheld or delayed);
 - (c) the system has been rolled back to the last working version of the Product and the timing of a Fix has been mutually agreed between the parties (such agreement not to be unreasonably withheld or delayed);
 - (d) the timing of a Fix has been mutually agreed between the parties (such agreement not to be unreasonably withheld or delayed);

For the avoidance of doubt:

- everyLIFE shall use reasonable endeavours to provide a resolution which constitutes a Fix in the first instance. Where this is not reasonably possible, everyLIFE shall provide an alternative resolution as set out in paragraph 2(b) or paragraph 2(c). The option referred to in paragraph 2(d) shall not constitute a resolution unless the other possible resolution options set out in paragraphs 2(a) to 2(c) have first been investigated and found to be impossible or unworkable, in which event the parties shall in good faith agree the timing of delivery of a Fix.
- everyLIFE shall not be in breach of the Service Levels if the Customer unreasonably withholds its agreement to the timing of delivery of the Fix.
- everyLIFE Technologies will make provision for the system to continue to be maintained for a period of no less than 3 months should everyLIFE suffer a critical business impact. This will afford customers sufficient time to invoke the appropriate business continuity measures, including data extraction.

Schedule 2
Additional Services (indicative)

- User training (additional training following the initial implementation of the Platform / Products).
- Additional form development.
- Customer specific reports and data outputs.
- Bespoke customer specified product development to support a new pathway and or operational demand
- Consultancy services, including but not limited to business analysis and system configuration.
- Hardware support