

These are the 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**”).

Services and the Documentation, as further described in clause 4;

BACKGROUND

- (A) everyLIFE has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of providing social care.
- (B) The Customer wishes to use everyLIFE's Software in its business operations and has provided everyLIFE with a signed Order Form setting out its proposed Software and Services requirements.
- (C) The Customer also wishes to promote the openPASS App as a sales tool in its business operations and as a consequence of this agreement EveryLIFE hereby grants the Customer permission to facilitate the use of the openPASS App to the Customer's Customers and other End Users pursuant to the terms of everyLIFE's openPASS App End – User Licence Agreement (EULA)
- (D) Pursuant to receipt of the Customer's signed Order Form, everyLIFE agrees to supply the Software to the Customer and has agreed to provide support and maintenance for such Software on the terms set out in this agreement.
- (E) By signing the Order Form the Customer acknowledges that it has read, understood and agrees to the terms and conditions herein and accepts the terms of the openPASS App EULA

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement and the schedules to it.
- 1.1.1 **Additional Services:** any other services that the Customer and everyLIFE may from time to time agree shall be supplied to the Customer by everyLIFE under the terms of this agreement;
- 1.1.2 **Administration Fee:** a 12.5% administration fee of each month's Subscription Fee in respect of administration costs;
- 1.1.3 **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;
- 1.1.4 **Annual Percentage Increase in CPI (Consumer Price Index):** the most recently available annual percentage increase in CPI (CPI Annual Rate 00:All items 2015 = 100) as reported by Office for National Statistics.
- 1.1.5 **Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the

- 1.1.6 **Business Days:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- 1.1.7 **Business Hours:** 9:00am to 5:00pm during a Business Day;
- 1.1.8 **Charges:** the charges payable for the Services under this agreement, being (where the context so requires) each or any of the following:
 - (a) the charges for the Standard Support Service;
 - (b) any charges agreed for Additional Services; and
 - (c) any charges agreed for any Expansion Packs;
 - (d) any charges associated with data extraction or retention following the termination of this agreement
 - (e) any charges agreed for inclusion of PASSci
 in each case as the same may be amended from time to time in accordance with the provisions of clause 9.6;
- 1.1.9 **Customer:** the legal company, business or person requesting the Software and Services by signing the Order Form and receiving such Software and Services from everyLIFE pursuant to the terms of this agreement;
- 1.1.10 **Customer App Obligations:** such obligations of the Customer further details of which are set out in clause 24.3;
- 1.1.11 **Customer Data:** the data inputted by the Customer, Authorised Users, or everyLIFE on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services;
- 1.1.12 **Customer's Care Contract:** a contract entered into between (i) the Customer and (ii) the Customer's Customer for the provision of care services by the Customer and/or its agents to the Customer's Customer;
- 1.1.13 **the Customer's Customer:** the person receiving care under the Customer's Care Contract;
- 1.1.14 **Confidential Information:** has the meaning given in clause 14;
- 1.1.15 **Control:** the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be construed accordingly;
- 1.1.16 **Critical Fault:** a (reproducible) fault which substantially hinders or prevents the Customer from using a material part of the functionality of the software in question;
- 1.1.17 **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;

- 1.1.18 **Data Protection Legislation:** as defined in the Data Processing Agreement;
- 1.1.19 **Data Sheet:** a document which lists the core functionality of PASS and available via the everyLIFE customer help centre.
- 1.1.20 **Day Rate:** means the day rate of the services team as notified to the Customer as set out in the Service Agreement Order Form.
- 1.1.21 **Deliverables:** any Documentation, Software, Maintenance Releases, New Versions, know-how or other works created or supplied by everyLIFE (whether alone or jointly) in the course of providing the Services;
- 1.1.22 **Documentation:** the document 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 sets out a description of the Services and the user instructions for the Services;
- 1.1.23 **Download:** the download of the PASS or openPASS App by an End User on a Supported Device;
- 1.1.24 **Effective Date:** The date of signing this agreement; This is the date when the contract becomes binding to both parties. Failure by the Customer to commit resources to attend relevant training and other meetings to progress implementation shall not constitute a change in the Effective Date.
- 1.1.25 **End User:** the user of the openPASS App being the Customer's Customer, or relative of the Customer's Customer, or friend of the Customer's Customer, or other person authorised by the Customer's Customer or appropriate legal representative;
- 1.1.26 **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 Software was able to perform above and beyond any Maintenance Releases or New Versions;
- 1.1.27 **GP Connect:** a third -party NHS Service provided in PASS by NHS Digital.
- 1.1.28 **GP Connect Access Record HTML:** a service offered by GP Connect that enables access to a 'read-only' view of the GP Practice patient record
- 1.1.29 **Licence Fee:** the fee payable by the Customer to everyLIFE
- 1.1.30 **Fix:** a resolution which satisfactorily resolves the reported fault as further described in Part 2 of Schedule 2 (Support Service);
- 1.1.31 **Implementation Cancellation Fee:** 10% of the Implementation Fee;
- 1.1.32 **Implementation Date:** means the date the Implementation Services are scheduled to take place on whether or not this date is altered by the Customer through rescheduling or cancellation;
- 1.1.33 **Implementation Fee:** means the sum payable on the date of this agreement as identified in the Order Form in respect of the Implementation Services;
- 1.1.34 **Implementation Services:** means the services required to implement the Software as more formally identified in the statement of work and during the project kick-off call
- 1.1.35 **Initial Term:** means the initial period as set out on the Service Agreement Order Form, being 12, 24 or 36 months, plus the initial 3 months prior to licensing commencing subject to any extended period agreed between the parties pursuant to clause 19;
- 1.1.36 **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;
- 1.1.37 **Maintenance Release:** a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;
- 1.1.38 **Manager:** the person appointed by the Customer from time to time in order to fulfil the role described in clause 11.2;
- 1.1.39 **Modification:** any Maintenance Release or New Version which is acquired by the Customer;
- 1.1.40 **New Version:** any new version of the Software and/or Expansion Pack 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;
- 1.1.41 **NHS Service:** any service(s) owned or developed by NHS Digital that are made available in PASS by everyLIFE and maybe offered from time to time to its customers who meet the Qualifying Criteria
- 1.1.42 **Non-Critical Fault:** any reproducible fault in the Software other than a Critical Fault;
- 1.1.43 **the openPASS App:** the openPASS software application licensed by everyLIFE (the entire legal and beneficial owner and licensor) to the Customer pursuant to the terms of the openPASS App Licence and any such Maintenance Release.
- 1.1.44 **openPASS App Licence:** a non-exclusive licence granted by everyLIFE to the Customer (as licensee) enabling the Customer to facilitate with the Customer's Customer's use of the openPASS App to End Users, further details of which are set out in clauses 24 to 25 inclusive;
- 1.1.45 **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>);
- 1.1.46 **Order Form:** the order form provided by the Customer to everyLIFE setting out the Customer's order and payment details, making reference to and acknowledging these terms and conditions (and any amendments thereto) and

- signed by the Customer;
- 1.1.47 **PASS:** everyLIFE's care planning, monitoring and point-of-care solution;
- 1.1.48 the **PASS App:** the PASS software application.
- 1.1.49 **PASSci:** PASSci is a suite of dashboards providing an aggregated view of data held within PASS for all locations belonging to the same group. The dashboards provide key performance indicators and trended data across multiple themes, helping to identify risks and opportunities to improve the way that the business is managed
- 1.1.50 **PASSroster:** everyLIFE's scheduling, finance, and payroll system
- 1.1.51 **Personal Data:** personal data as defined in the Data Protection Legislation;
- 1.1.52 **Qualifying Criteria:** any of the conditions set by everyLIFE or NHS Services provider for the Customer to meet in order to access certain NHS Services that may be offered in PASS as part of this agreement
- 1.1.53 **Response:** in relation to the Service Levels set out in Part 2 of Schedule 2, the response timeframe of everyLIFE to a technical enquiry relating to the Software;
- 1.1.54 **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 2;
- 1.1.55 **Service Level Table:** the table set out in Part 2 of Schedule 2;
- 1.1.56 **Services:** includes (as appropriate) the Standard Support Service, the Updating Service and any Additional Services which are included within an order for Additional Services under clause 7
- 1.1.57 **Site:** such site or sites of the Customer set out within the Order Form;
- 1.1.58 **Software:** the online or mobile software application PASS and PASS App;
- 1.1.59 **Solution:** either of the following outcomes:
- (a) correction of a Fault; or
 - (b) a workaround in relation to a Fault (including a reversal of any changes to the Software if deemed appropriate by everyLIFE) that is reasonably acceptable to the Customer.
- 1.1.60 **Specification:** the description or specification of the Services provided in writing by everyLIFE to the Customer;
- 1.1.61 **Standard Support Service:** the support service more particularly described in Part 1 of Schedule 2, which is to be provided by everyLIFE to the Customer under clause 3.1 and clause 3.2; (Schedule 2)
- 1.1.62 **Standard Support Hours:** 09:00am to 5.00pm Monday to Friday, except on days which are bank holidays in England; and not including out of hours support
- 1.1.63 **Subscription Fees:** means the agreed sum payable by the Customer to everyLIFE as set out within the Service Agreement Order Form;
- 1.1.64 **Subscription Levels:** everyLIFE's policies for providing support (the different levels of which the Customer will have elected in the Order Form) in relation to the Services as made available at www.passgenius.com or such other website address as may be notified to the Customer from time to time;
- 1.1.65 **Subscription Term:** has the meaning given in clause 19.2(c)18 (being the Initial Term together with any subsequent Renewal Periods);
- 1.1.66 **Supported Device:** a supported device of a minimum specification as set out on everyLIFE's help centre. Requirements for use of openPASS are available at <https://www.openpass.com/what-are-the-minimum-device-requirements/> (which specification the Customer shall warrant such device will comply with) used by an End User to access the openPASS App;
- 1.1.67 **Supported Software:** has the meaning set out in clause 10.1;
- 1.1.68 **Support Period:** the Initial Term, any subsequent renewal periods, and if requested by the Customer, any period during which the Customer transfers the Services to an alternate service provider;
- 1.1.69 **Support Request:** request made by the Customer in accordance with this schedule for support in relation to the Software, including correction of a Fault;
- 1.1.70 **Support Staff:** those individuals who perform everyLIFE's obligations under this agreement including (where the context permits) the Support Manager;
- 1.1.71 **Updating Service:** the service to be supplied by everyLIFE to the Customer pursuant to clause 3.1 and clause 3.3;
- 1.1.72 **User-Connected:** means an End User linked to, and authorised by, a specified Customer's Customer; and
- 1.1.73 **User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.
- 1.2 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.
- 1.3 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.
- 1.4 Words in the singular include the plural and those in the plural include the singular.
- 1.5 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.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 **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 everyLIFE shall supply the Services (and where applicable the Additional Services) to the Customer in accordance with the Specification in all material respects. NHS Services will be supplied in accordance with specification as set by NHS Digital or another NHS Services provider. Neither everyLIFE nor the Customer shall have authority to change such specification unless expressly directed to do so by the NHS Services provider.
- 2.2 Included within the Services is everyLIFE's standard Customer support services during Business Hours in accordance with everyLIFE's Subscription Levels in effect at the time that the Services are provided. everyLIFE reserves the right to amend the Subscription Level in its sole and absolute discretion from time to time. The Customer may purchase Additional Services separately at everyLIFE's then current rates.
- 2.3 everyLIFE shall use all reasonable endeavours to meet any performance dates specified in Part 2 of Schedule 2, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.4 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 event.
- 2.5 everyLIFE warrants to the Customer that the Services will be provided using reasonable care and skill.

3. THE SERVICES

- 3.1 everyLIFE shall supply, and the Customer shall take and pay for, the following Services:
- (a) the Standard Support Service;
 - (b) the Updating Service; and
 - (c) such of the Additional Services as are included from time to time within an order for Additional Services agreed between everyLIFE and the Customer under clause 4.
- 3.2 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 24 hour UK based telephone help desk to provide first-line support to users of the Supported Software; and
 - (ii) remote diagnosis and, where possible, correction of faults using the software management software.
- all as more particularly defined in Part 1 of Schedule 2.

- (b) 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.
- (c) 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.
- (d) the Standard Support Service shall meet the Service Levels set out in Schedule 2.

3.3 In relation to the Updating Service:

- (a) everyLIFE shall issue Modifications of the Software 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 Software or a temporary by-pass solution) in the absolute discretion of everyLIFE;
- (b) everyLIFE shall issue New Versions of the Software 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 Modification 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 Standard Support Service, but excludes any sum payable by the Customer in respect of the licence of any Expansion Pack.

3.4 everyLIFE shall have no obligation to provide the Services where faults arise from:

- (a) misuse, incorrect use of or damage to the Software 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 Software;
- (c) use of the Software in combination with any equipment or software not provided by everyLIFE or not designated by everyLIFE for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;
- (d) relocation or installation of the Software by any person other than everyLIFE or a person acting under everyLIFE's instructions;
- (e) any breach of the Customer's obligations under this agreement howsoever arising or having the Software maintained by a third party;
- (f) any Modification not authorised by everyLIFE resulting in a departure from the Specification; or
- (g) operator error.

3.5 everyLIFE 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 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 the Supplier has used reasonable endeavours to give the Customer notice in advance.
- 3.6 During the Maintenance Window the telephone support desk as set out in clause 3.2 (a) will be available. However, only limited rectification steps will be able to be taken during the Maintenance Window.
- 3.7 Pursuant to clause 3.6, 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.
- 3.8 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. SUBSCRIPTION LEVEL/USER SUBSCRIPTIONS

- 4.1 Subject to the Customer purchasing the User Subscriptions in accordance with the terms and conditions of this agreement, everyLIFE grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 4.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) each Authorised User shall be provided with unique user credentials and keep a secure password for his use of the Services and Documentation, that such password shall comply with everyLIFE's password policy. The User password shall be changed as frequently as deemed necessary, including after actual/ suspected account password compromise and that each Authorised User shall keep his password confidential. Use of generic logins and sharing of passwords shall constitute a breach of this clause 4(a) and may result in removal of access and / suspension of the services.
 - (b) it shall maintain a written, up to date list of current Authorised Users and provide such list to everyLIFE within 5 (five) Business Days of everyLIFE's written request at any time or times;
 - (c) it shall permit everyLIFE to audit the Services in order to establish, inter alia, the number of active Authorised Users together with the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at everyLIFE'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;

- (d) if any of the audits referred to in clause 4.2(c) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to everyLIFE's other rights, the Customer shall promptly disable such passwords and everyLIFE shall not issue any new passwords to any such individual; and
 - (e) if any of the audits referred to in clause 4.2(c) reveal that the Customer has underpaid Subscription Fees to everyLIFE, then without prejudice to everyLIFE's other rights, the Customer shall pay to everyLIFE an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form within 10 Business Days of the date of the relevant audit.
- 4.3 The Customer shall not and shall procure that no employee, officer, agent, contractor or worker of the Customer shall not, access, store, distribute or transmit any viruses, and shall maintain at all times adequate virus protection software with reputable provider.
- 4.4 The Customer shall not and shall procure that no employee, officer, agent, contractor or worker of the Customer shall not access, store, distribute or transmit 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) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and everyLIFE 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.

- 4.5 The Customer 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 Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to 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; or subject to clause 18 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
 - (d) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 4.
- 4.6 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 everyLIFE.
- 4.7 The rights provided under this clause 4 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. CUSTOMER DATA

- 5.1 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 the Customer Data.
- 5.2 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.
- 5.3 Where the Customer has GP Connect enabled, 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 GP Connect Declaration form which will be provided by everyLIFE as part of implementation. This service depends upon both everyLIFE and the Customer using the GP Connect appropriately. Both NHS Digital and everyLIFE reserve the right to independently remove this feature from individual Customer use at our discretion and without prior notice.

6. AUDITS

- 6.1 The Customer shall allow everyLIFE to undertake verification that the Services are being provided and all obligations of the Customer are being performed in accordance with this agreement; and/or
- (a) undertake verification that the Customer's system protects the integrity, operational availability, confidentiality and security of the Customer Data; and/or

(b) undertake verification of the number of User Subscriptions.

6.2 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 co-ordinated with each other to minimise any disruption.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 If an audit identifies that the number of User Subscriptions is higher than the Customer had notified everyLIFE, then the Customer shall pay to everyLIFE the sum that would have been payable to everyLIFE in respect of the additional User Subscriptions for the duration of the Term.

7. ORDERS FOR ADDITIONAL SERVICES

7.1 The Customer may from time to time request everyLIFE to supply Additional Services of the type set out in Schedule 3 at such rates in place as at that date. 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.

7.2 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.

7.3 everyLIFE will make reasonable endeavours to complete any agreed Additional Services within a period no later than 6 calendar months from receiving the signed order for Additional services

8. FURTHER TERMS RELATING TO THE SERVICES

8.1 Any obligation of everyLIFE's to provide on-site services pursuant to the terms of this agreement shall only extend to the Site(s).

8.2 everyLIFE shall ensure that while on the Customer's premises the Support Staff and any and all other persons who enter such premises with the authority of everyLIFE for the purpose of, or in connection with, this agreement or the provision of the Services, adhere to the Customer's security procedures and health and safety regulations as from time to time notified to everyLIFE, or otherwise brought to the notice of everyLIFE or such persons.

8.3 everyLIFE shall incur no liability for any delay in performing or failure to perform its obligations under this agreement as a result of compliance with the terms of clause 8.2.

9. CHARGES AND PAYMENT

9.1 The Customer shall pay the Subscription Fees in advance by monthly direct debit to everyLIFE for the User Subscriptions in accordance with this clause 9 and the Order Form.

9.2 Unless as expressly agreed and set out within the Service agreement order form, in the event that the Customer elects to pay the Subscription Fees 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.

9.3 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, account and 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.

9.4 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.

9.5 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).

9.6 everyLIFE shall be entitled to increase subscription fees in the following circumstances:

- a) every 12 months to reflect an inflationary increase. The subscription fee will increase by a maximum of the Annual Percentage Increase in CPI;
- b) quarterly, where the number of service users/residents increases, causing the customer to require uplift to a new subscription band.

9.7 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.

- (a) 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;
- (b) A fee of £150.00 or accrued expenses (whichever is the greater) in the event that the cancellation or rescheduling occurs within 1 (one) week of the Implementation Date.

10. SUPPORTED SOFTWARE

10.1 The Supported Software is:

- (a) the Software;
- (b) any Modification which is acquired by the Customer (whether under the Licence, this agreement or any other agreement between everyLIFE and the Customer) during the course of the Licence and which accordingly becomes part of the software defined as the Software under the Licence; and
- (c) any other software which everyLIFE and Customer agree should be Supported Software for the purposes of this agreement including the software listed in Schedule 1.

10.2 In relation to Maintenance Releases, as part of the Updating Service, everyLIFE shall from time to time make Maintenance Releases available to the Customer without charge; and

10.3 In relation to New Versions, if everyLIFE releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any right to terminate this agreement, nor shall it result in any adverse effect on the Services or the performance of everyLIFE's obligations under this agreement. However, if everyLIFE has released a New Version since the version which forms part of the Supported Software, and the Customer has not, within 12 months of everyLIFE's having notified the Customer that a New Version is available, acquired and installed that New Version, 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's obligations in respect of the Supported Software shall be reduced to the Legacy Obligations and the Charges shall be reduced to the Legacy Fees.

10.4 For the duration of the Initial Term the Subscription Level selected by the Customer cannot be altered to a lower band asset out in the Subscription Level. The Customer may at any time increase the band of Support Services by requesting such change to everyLIFE in writing. In the event of a change of supply, the Customer shall pay the increased Subscription Fee in accordance with clause 9.

10.5 During subsequent renewal periods, the Customer may alter the Subscription Level to take effect at the next Renewal Period and the Customer shall pay such revised Subscription Fee in accordance with clause 9.

11. THE CUSTOMER'S RESPONSIBILITIES

11.1 Without prejudice to clause 8.2, the Customer shall provide everyLIFE, the Support Manager, the Support Staff and all other persons duly authorised by everyLIFE with full, safe and uninterrupted access to the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's Sites, the Customer shall provide adequate working space and office facilities (including telephone) for use by the Support Staff and take reasonable care to ensure their health and safety.

11.2 The Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Support Manager.

11.3 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;
- (b) ensure that the internet connectivity operated by the Customer is of a sufficient strength in all areas where the Software is accessed to ensure that access is achievable;
- (c) report faults promptly to everyLIFE;
- (d) take such steps as necessary (including but not limited to the installation of wi-fi boosters) to fulfil their obligations under this clause 11.3.
- (e) have responsibility for procuring and utilising the technology infrastructure that will enable it to receive the benefit of the Services (including as required for access to the PASS platform)
- (f) have sole responsibility for the accuracy of information recorded in PASS and shall indemnify everyLIFE against any harm, loss, damages or claim that may arise due to the Customer and the Customer's employees entering incorrect information in PASS.
- (g) use the Services as intended by everyLIFE and follow all guidance for use as described in training and other provided resources materials. This includes use of the App in offline mode. For medication administration when in offline mode,

further guidance is provided within the PASS Medication Management guideline provided within the help centre.

(h) verify the accuracy of personal information that it requires a third-party roster provider to make available in PASS via any integration between the systems that they request. Incorrect personal data that is transferred into PASS by a third-party roster provider will be deemed a data incident of the relevant roster partner.

(i)
(j) Help to minimize security risks by implementing appropriate technical and organisational measures including, inter alia taking up software updates as they become available; 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 Subscription fees remain payable during any such suspension of the Services.

11.4 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. The Customer shall comply with all Data Protection Legislation in force at any time during the duration of this agreement and 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. everyLIFE shall indemnify the Customer against any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer 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. everyLIFE shall comply with all Data Protection Legislation in force at any time during the duration of this agreement and shall indemnify the Customer against any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of everyLIFE's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

11.5 In the event that the Customer decides to deploy everyLIFE's openPASS App in its care office(s) for the purposes of use with the Customer's customers (thus allowing authorised access to the Customer's customer care notes), the Customer hereby acknowledges use of the openPASS App is subject to the openPASS App end user licence agreement (EULA) set out as set out in this agreement.

11.6 Promptly notify everyLIFE in writing in the event of sale of their care business such that they cease to be the Data Controller of the Personal Data processed in PASS

12. 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.

13. RISK AND TITLE

Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by everyLIFE to the Customer shall pass to the Customer on acceptance by the Customer.

14. CONFIDENTIALITY AND PUBLICITY

14.1 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.

14.2 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.

14.3 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.

14.4 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.

14.5 The provisions of this clause 14 shall remain in full force and effect notwithstanding any termination of this agreement.

15. DATA PROTECTION

15.1 The parties will execute and comply with the Data Processing

Agreement which will apply to any processing of Personal Data under this agreement.

- 15.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15.2 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 15.3 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.
- 15.4 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 software including, inter alia, where the Customer allows Bring Your Own Device (BOYD), a robust BOYD 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 software.

16. EVERYLIFE'S WARRANTIES

- 16.1 everyLIFE represents and warrants to the Customer that:
- (a) the Software will be made available to the Customer based on the Subscription Level purchased by the Customer;
 - (b) the Services will be performed:
 - (i) in accordance with all applicable laws and regulations; and
 - (ii) with all reasonable skill and care;
 - (c) PASS will provide all the facilities and functions and will perform substantially as described in the Data Sheet;
 - (d) to the best of its knowledge and belief, the Deliverables will not infringe the UK Intellectual Property Rights of any third party; and
 - (e) 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.
- 16.2 In respect of the openPASS App, everyLIFE represents and warrants to the Customer that:
- (a) the openPASS App will conform in all material respects to the Specification for a period of 90 days from the date of the Licence (the "Warranty Period"). If, within the Warranty Period, the Customer notifies everyLIFE in writing of any defect or fault in the openPASS App in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault

does not result from the Customer, or anyone acting with the authority of the Customer, having amended the openPASS App or used it outside the terms of the Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by everyLIFE, or it has not been loaded onto everyLIFE specified or suitably configured equipment, everyLIFE shall, at the everyLIFE's option, do one of the following:

- (i) repair the openPASS App;
- (ii) replace the openPASS App; or
- (iii) terminate this Licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the openPASS App to the date of termination),

provided the Customer provides all the information that may be necessary to assist everyLIFE in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable everyLIFE to re-create the defect or fault.

- 16.3 The Customer acknowledges that any Open-Source Software provided by everyLIFE is provided "as is" and expressly subject to the disclaimer in clause 16.7
- 16.4 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 clauses 16.1(a) to 16.1(e), everyLIFE shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to everyLIFE under this agreement during the year in which the termination occurs, less a 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 16.4. This clause sets out the Customer's sole remedy and everyLIFE's entire liability for breach of clauses 16.1(a) to 16.1(e).
- 16.5 No representation or warranty is given by everyLIFE that all faults will be fixed, or will be fixed within a specified period of time.
- 16.6 The warranties provide in this clause 16 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. If the Services do not conform with the foregoing undertaking, everyLIFE 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 a warranty set out in clause 16. Notwithstanding the foregoing, everyLIFE:

- (a) does not warrant that the Customer's use of the Services, the Software, Expansion Packs or the openPASS App will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services the Software, Expansion Packs, PASSci or the openPASS App and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

16.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement and the Licence 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.

17. LIMITS OF LIABILITY

17.1 Except as expressly stated in clause 17.2:

- (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) special damage, even though everyLIFE was aware of the circumstances in which such special 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;

provided that this clause 17.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 17.1(c) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 17.1(a);

- (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, (other than any liability incurred through the openPASS App) shall in no circumstances exceed a sum equal to the total Subscription Fees paid for the User Subscriptions;

- (d) the total liability of everyLIFE, whether in contract, tort (including negligence) or otherwise and whether in connection with the openPASS App Licence or any collateral contract, shall in no circumstances exceed a sum equal to the average aggregate fees received by everyLIFE.

17.2 The exclusions in clauses 16.5 to 16.7 (inclusive) and clause 17.1 shall apply to the fullest extent permissible at law but everyLIFE does not exclude 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.

17.3 The Customer acknowledges that:

- (a) it is exclusively responsible for:
 - (i) reviewing any new Modifications in accordance with clause 3.3(a); ensuring that the staff of the Customer are trained in the proper use and operation of the Software;
 - (ii) ensuring the security, completeness and accuracy of all inputs; and
 - (iii) the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software;
- (b) it is in a better position than everyLIFE to assess and manage its risk in relation to use of the Software.

17.4 All dates supplied by everyLIFE for the delivery of the Modifications or the provision of Services shall be treated as approximate only. everyLIFE shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

17.5 All references to everyLIFE in this clause 17 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, in accordance with clause 33.

18. ASSIGNMENT AND SUBCONTRACTING

18.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement including the Licence without the prior written consent of everyLIFE (such consent not to be unreasonably withheld or delayed).

18.2 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 including the Licence, provided it gives written notice to the Customer.

18.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18.4 Notwithstanding clause 14, 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 18.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

19. DURATION

19.1 This agreement shall, unless terminated in accordance with clause 20, commence on the Effective Date and shall continue for the Initial Term.

19.2 At the end of the Initial Period this agreement shall be automatically renewed for successive periods of 12 month rolling ("Renewal Period"), unless:

- a. either party notifies the other party of termination, in writing, at least 90 days before the end of the current Subscription Term in which case this agreement shall terminate upon the expiry of the current Subscription Term.; 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.

20. TERMINATION

20.1 Without limiting its other rights or remedies and notwithstanding clause 19.2(a), either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (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. For the avoidance of doubt, a material breach of this agreement will include a failure by the Customer to have in place the requisite anti-virus software and protections in place as set out in clause 4.3;
- (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 20.1(b) to clause 20.1(h) (inclusive);
- (i) in the case of the Customer 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.

20.2 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 20 Business Days after being notified in writing to do so.

20.3 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 20.1(b) to clause 20.1(k), 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.

20.4 For the purposes of clause 20.1(a) **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) a substantial portion of this agreement; or

(b) any of the obligations set out in clauses 8, 10, 14 and 15;

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

21. EFFECT OF TERMINATION

21.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

21.2 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 clauses 1, 8, 10, 12, 14 and 21 to 38 (inclusive) and Schedules 2, and 3 shall remain in full force and effect.

21.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

21.4 Notwithstanding its obligations in this clause 21, 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.

21.5 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, CD-ROMs or DVDs 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 14), provided that the Customer may retain copies of any everyLIFE Confidential Information incorporated into the Software;

(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.

21.6 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.

21.7 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).

21.8 The options available to the Customer are as follows:

(a) The Customer data may be retained within the PASS as a legacy solution and on a single licence access basis for minimum period of 8 years at a rate of 10% of the licence fee 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 PASS.

(c) The Customer may have their data deleted, or otherwise destroyed by everyLIFE.

21.9 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.

21.10 The Customer may enter into a separate contract with everyLIFE to retain their data past the termination of this agreement.

22. FORCE MAJEURE

22.1 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, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

22.2 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.

22.3 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.

23. INTELLECTUAL PROPERTY RIGHTS

23.1 All Intellectual Property Rights in the Deliverables, the Expansion Packs and the openPASS App shall belong to everyLIFE, and the Customer shall have no rights in respect of any of the Deliverables, the Expansion Packs and the openPASS App except as expressly granted under this agreement and Licence. 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 this clause 23.1.

23.2 everyLIFE undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use or possession of any of the Deliverables, the Expansion Packs and the openPASS App (or any part of them) infringes the UK Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 23.2 shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Deliverables, the Expansion Packs and the openPASS App (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Deliverables, the Expansion Packs and the openPASS App 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 Deliverables, the Expansion Packs and the openPASS App not so combined, or use of a non-current release of the Software.

23.3 Clause 23.2 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.

23.4 If any Claim is made, or in everyLIFE's reasonable opinion is likely to be made, against the Customer, everyLIFE may at its sole option and expense:

- (a) procure for the Customer the right to continue using, developing, modifying or maintaining the Deliverables, the Expansion Packs and the openPASS App (or any part of them) in accordance with the terms of this agreement;
- (b) modify the Deliverables, the Expansion Packs and the openPASS App so that they cease to be infringing and provide comparable functionality; replace the Deliverables, the Expansion Packs and the openPASS App with non-infringing works providing comparable functionality; or
- (c) terminate this agreement immediately on notice to the Customer and repay to the Customer all sums which the Customer has paid to everyLIFE under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination.

23.5 Notwithstanding any other provision in this agreement, clause 23.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software incorporated into the Software or through the breach of any third-party licence relating to any Open-Source Software so incorporated howsoever arising.

23.6 This clause 23 constitutes the Customer's exclusive remedy and everyLIFE's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 17.1.

24. LICENCE

24.1 In consideration of:

- (a) the Subscription Fee paid by the Customer to everyLIFE; and
- (b) the Customer complying with the Customer App Obligations (where applicable);

everyLIFE grants to the Customer a non-exclusive licence for the Term to use the Software, and where purchased by the Customer, any Expansion Pack, PASSSci and where forming part of the Customer's Subscription Level, facilitate the openPASS App within its service offering, to End Users for use by End Users (**Licence**).

24.2 In relation to scope of use:

- (a) for the purposes of clause 24.1, the facilitation of the openPASS App shall be restricted to promotion of the openPASS App in object code
- (b) for the purposes of clause 24.2, "use of the openPASS App" means accessing the openPASS App by way of a Download;
- (c) the Customer may not promote the openPASS App other than as specified in clause 24.2 (a) and clause 24.2(b) without the prior written consent of everyLIFE, and the Customer acknowledges that additional fees may be payable on any change of use approved by everyLIFE;
- (d) except as expressly stated in this clause 24, the Customer has

no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the openPASS App in whole or in part except to the extent that any reduction of the openPASS App to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the openPASS App with the operation of other software or systems used by the Customer;

- (e) in addition to clause 11.5, the Customer shall indemnify and hold the Customer harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any third-party additional terms ("**Third-Party Additional Terms**") howsoever arising.

everyLIFE may treat the Customer's breach of either clause 24.2 or a breach of any Third-Party Additional Terms, as a breach of this Licence

24.3 The Customer shall:

- (a) ensure that it has legally robust contractual terms in place in connection with the promotion and resale of the openPASS App to End Users, together with any suitable back-to-back warranties and indemnities with its End Users (together the "**End User Agreements**"), particularly in avoiding a breach of clause 18.1 of this agreement;
- (b) keep a complete and accurate record of End Users (including User-Connected End Users) and produce such record to everyLIFE on request from time to time; and
- (c) notify everyLIFE as soon as it becomes aware of any unauthorized use of the openPASS App by any person.

24.4 The Customer shall permit everyLIFE to inspect any End User Agreements provided that everyLIFE provides reasonable advance notice to Customer of such inspections, which shall take place at reasonable times.

25. EXPORT

25.1 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.

25.2 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.

26. THIRD PARTY PROVIDERS

26.1 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 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 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 everyLIFE.

26.2 everyLIFE 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.

26.3 everyLIFE does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

26.4 everyLIFE may, from time to time refer to third party research and information. At no time does everyLIFE warrant the reliability of such information

27. 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.

28. 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.

29. ENTIRE AGREEMENT

29.1 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.

29.2 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.

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

30. VARIATION

This agreement may be updated from time to time. Variation of this agreement shall be considered effective once notified to the party, with confirmation of the revisions. 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.

31. SEVERANCE

31.1 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.

31.2 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.

32. COUNTERPARTS

32.1 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.

32.2 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.

32.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

33. THIRD-PARTY RIGHTS

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

34. NO PARTNERSHIP OR AGENCY

34.1 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.

34.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

35. NOTICES

35.1 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);

35.2 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.

35.3 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.

36. DISPUTE RESOLUTION

36.1 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 36 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.

36.2 If any disagreement or difference of opinion arises out of this agreement, the matter shall be disposed of as follows:

(a) the 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.

36.3 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 36 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.

36.4 For the avoidance of doubt, this clause 36 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.

37. 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.

38. 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).

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

Schedule 1 Supported Software

- * PASS suite of products
- * openPASS App

Schedule 2 Standard Support Service

Part 1. Description

everyLIFE's Standard Support Services package for the PASS suite of 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 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 PASS. 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 3, (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 Software 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 3 Additional Services

- User training (additional training following the initial implementation of PASS).
- 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

Schedule 4 openPASS App Usage Fee

The fee as stated on the Customer's Order Form, being the monthly fee payable by the Customer to everyLIFE in relation to User-Connected Download(s).

