SOFTWARE AS A SERVICE AGREEMENT

Parties:

Everyday Ltd,Camburgh House, 27 New Dover Road, Canterbury, Kent, CT1 3DN registered in England and Wales with Company Registration Number 07011283

And

The Client

Effective Date:

This Software as a Service Agreement (“Agreement”) is entered into by and between Everyday Ltd., (Everyday) and the Client,

And is effective as of the date specified above (the “Effective Date”). The Agreement consists of the terms and conditions set forth any other exhibits identified below and any Order Forms (as defined below) that reference this

Agreement.

ATTACHMENTS

1. Terms and Conditions

2. Order Form

3. Service Level Agreement

4. Professional Services Statement of Work (if applicable)

Accepted and agreed to as of the Effective Date by the authorized representative of each party:

The Client

Signature:

Print Name:

Title:

Date:

Everyday Ltd.

Signature:

Print Name:

Title:

Date:

TERMS AND CONDITIONS

Scope of Agreement. This Agreement permits the Client to receive and use Everyday’s services that it makes available for an agreed fee and sets forth the terms and conditions under which they will be delivered and paid for.

1. This Agreement will govern the Client’s services on the Effective Date as well as any future orders placed by the Client that reference this Agreement.

2. Definitions.

2.1 Affiliates: all entities that (directly or indirectly) control, are controlled by or are under common control with that party, where “control” means ownership of or the right to control greater than 50% of the voting interests of such entity.

2.2 Authorized Users: those employees, agents and Contractors of the Client who are authorized by them to access and use the Services and Documentation, as further described in Clause 3, below, and the Order Form.

2.3 The Client’s Data: the data, content or information inputted by the Client, Authorized Users, or Everyday on the Client's behalf for the purpose of using the Services.

2.4 Client Materials: Technical data, computer programs, files, documentation, and/or other materials that are necessary for the performance of Professional Services by Everyday.

2.5 Concurrent Users: Authorized Users using the Services simultaneously.

2.6 Confidential Information: Any and all code, inventions, know-how, business, technical and financial or other information that one party receives from the other, provided that it is identified as confidential at the time of disclosure or should be reasonably known by the receiving party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, documentation or technical information provided by Everyday relating to the Service, and the terms of this Agreement will be deemed Confidential Information of Everyday.

2.7 Content: information that is obtained by Everyday and provided to the Client via the Services.

2.8 Contractor: any Third-Party providing services or seeking to provide services to or on behalf of the Client which has been provided with a valid password or other means of accessing and using the Service.

2.8.1 Data Protection Laws: means (a) any law, statute, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a party is subject, including the GDPR and the Data Protection Act 2018; and (b) official guidance published by the ICO or other applicable Regulator or the European Data Protection Board from time to time;

2.9 Deliverables: means deliverables identified in a Statement of Work or otherwise provided to the Client as part of Professional Services performed by Everyday or their nominated consultants.

2.10 Documentation: any document(s) made available to the Client from time to time that set(s) out a description of the Services and the user instructions for the Services.

2.11 Non-Production Environment(s): online environment(s) dedicated to use in developing and testing the Client’s Services.

2.12 Order Form: any order form for Services, attached to this Agreement.

Services subject to the terms and conditions of this Agreement.

2.14 Professional Services: configuration, implementation and other services provided pursuant to a Statement of Work.

2.15 Service(s): means the features, functionality and services that are ordered by the Client on an Order Form and made available online to the Client by Everyday under this Agreement.

2.16 Statement of Work: means any statement of work, executed by both parties, that either references this Agreement or is provided as part of Professional Services, including without limitation, if applicable, a statement of work attached.

2.17 Subscription: means the Client’s ability to access and use a Service, as described in Clause 3, for a predetermined period.

2.18 Subscription Fees: the annual fees payable by the Client to Everyday for a Subscription to the Services, as set out in an executed Order Form.

2.19 Term, Initial Term and Renewal Term: each have the definition given to them in Clause 9.1.

2.20 Third Party: any entity other than (i) Everyday, (ii) the Client, (iii) Permitted Client’s Contractors.

3. Subscriptions.

3.1 Subscription. Subject to the terms and conditions of this Agreement, including payment of applicable Subscription Fees,

(i) Everyday shall provide and the Client may access and use the Service(s), solely for the Client's internal operations, and

(ii) Everyday hereby grants the Client a non-transferable, non-sublicensable, non-exclusive, revocable license to use the Documentation and Content, solely for the Client’s internal operations; each for the term of the Subscription set out in the applicable Order Form, but each only in accordance with this Agreement (including its exhibits), the Documentation, and any additional limitations set forth on the applicable Order Form.

3.2 Use by Contractors. Subject to the terms and conditions of this Agreement, Permitted Client Contractors may use the Services applicable Documentation under the Client’s Subscriptions, provided that (a) such use is only for the Client’s internal use, (b) the Client agrees to remain responsible for the Contractor’s compliance with the terms and conditions of this Agreement.

3.3 Authorized Users. The Client covenants that:

3.3.1 The maximum number of Authorized Users that the Client authorizes to access and use the Services and the Documentation will not exceed the number of Authorized Users permitted to access and use the Services as determined by the Order Form.

3.3.2 When a password is required to access the Service, each Authorized User shall keep a secure password for use of the Services and shall keep that password confidential.

3.4 Service Levels. Everyday will provide the Service in accordance with the service levels described in the SLA statement.

4. Restrictions.

4.1 The Client shall not, and shall not allow any Authorized User or Third Party to:

4.1.1 reverse engineer the Services, or any component of them, or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of software used in the Service by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to Everyday);

4.1.2 distribute, sell, sublicense, rent or otherwise transfer the Service.

4.1.3 recreate, lease or use the Services for time sharing, hosting, service provider or like purposes.

4.1.4 in any way use the Services and/or Documentation to provide Services to a Third-Party.

4.1.5 post or introduce any data, virus, worm, or other harmful or malicious software code, agent, hidden procedure, routine or mechanism, through or to the Services, that causes or is designed to cause either to cease functioning, or to disrupt, disable, harm or otherwise impair in any manner, the operation of the Services or any software, firmware, hardware, computer system or network of Everyday.

5. Ownership.

5.1 Ownership. Notwithstanding anything to the contrary contained in this Agreement, Everyday and its suppliers have and will retain all rights, title and interest in and to the Service and Documentation (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) and all copies, modifications and derivative works thereof. The Client acknowledges that it is obtaining only a limited right to use the Service and Documentation, and that no ownership rights are being conveyed to the Client under this Agreement or otherwise.

5.2 The Client Data and Aggregate Data. The Client owns or has license to all rights, title and interest in and to all the Client Data and has sole responsibility for the legality, reliability, integrity, accuracy and quality of the said Data.

6. Privacy and Security.

6.1 Pursuant to relevant Data Protection Laws, the Client acknowledges that Everyday is only acting as a “data processor” on behalf of the Client and that the Client is the “data controller”.

6.1.1 The Client acknowledges that some data collected by the Service may be retraceable to individuals ("Personal Data"). Each time an Authorized User logs on to the Service, certain information, including the username, will be processed in the Service application software. This information is used to manage the Authorized User’s account, Services and other personalized features. Everyday may match the username to personally identifiable information in order to provide the Authorized User with Services that the Authorized User is entitled to use and to provide relevant data and information.

The Client confirms that it shall clearly, conspicuously, and regularly notify all Authorized Users and other personnel, persons or entities using the Service of the foregoing collection, transmission and use of the Client’s Data, including any Personal Data contained therein; that the Client has obtained and will obtain all necessary consents from designated Authorized Users and other personnel, persons or entities using the Service who may be affected thereby, and that in doing so the Client has otherwise complied fully with its obligations under applicable law relating to the transmission and use of personal data.

6.2 Everyday maintains commercially reasonable administrative, physical and technical safeguards for the security, protection and confidentiality of the Client Data.

7. Implementation and Other Professional Services.

7.1 Professional Services Generally. Any Professional Services to be provided under this Agreement will be subject to separate Statements of Work.

7.2 Initial Scope of Work for Implementation and Related Services. If applicable, any initial implementation and related Professional Services will be provided pursuant to this Agreement and the Statement of Work attached hereto.

7.3 Changes to Scope of Professional Services. If the Client desires to change a Statement of Work, the Client will submit a written request detailing the proposed changes. If Everyday is willing to accommodate such changes, they shall prepare an amendment to the Statement of Work detailing the changes, any fee adjustments required as a result of such changes, any adjustments to the delivery schedule required as a result of such changes, and any other necessary adjustments. If the revised Statement of Work amendment is agreeable to the Client, both parties will execute the amendment. Unless and until the Client and Everyday agree to such an adjustment to the Statement of Work, it will remain unchanged.

7.4 Acceptance of Professional Services and Deliverables. Everyday will be deemed to have delivered any Professional Services or Deliverables identified in a Statement of Work on the date on which Everyday delivers the Professional Services or Deliverables that conform in all material respects to the specifications agreed to in writing between the parties. Acceptance (if required in the applicable Statement of Work) will be deemed to have occurred if the Client does not provide a notice of acceptance or written cure notice within fourteen (14) days of delivery.

8. Fees and Payment.

8.1 Subscription Fees. The fees for the Subscriptions provided under this Agreement are set out on the Order Form(s). Subscription Fees are due annually and in advance, beginning on the Effective Date and continuing on each anniversary of the Effective Date. Subscription Fees for any Renewal Term (defined below), renewed Subscriptions or additional Subscriptions will be agreed between the parties.

8.2 Professional Service Fees. For Professional Services, including implementation and related professional services, the Client will pay Everyday the amounts and at the times set forth on the applicable Statement of Work.

8.3 Payment. All payments are non-refundable (except as expressly set forth in this Agreement) and will be made in GBP, as invoiced, unless otherwise indicated on an Order Form.

Payment on the undisputed amounts of any invoice will be made within thirty (30) days of the invoice date unless otherwise specified in the applicable Order Form.

The Client must notify Everyday of any dispute over an invoice amount in writing within 20 days of the invoice date or the dispute will be waived. The Client’s notice must detail the specific amount and basis for the dispute.

9. Term of Agreement.

9.1 Term. This Agreement will have an initial term commencing upon the Effective Date and extending for the term set forth on an Order form, or if none is specified, three (3) years (the “Initial Term”). At the end of the Initial Term, the Agreement will automatically renew for consecutive renewal terms equal to the Initial Term (each a “Renewal Term”). Either party may elect not to renew the Agreement at the end of the Initial Term or any Renewal Term by giving written notice to the other at least ninety (90) days prior to the end of the then-current Term. The Initial Term and each Renewal Term are referred to as the “Term.”

9.2 Termination. Either party may terminate this Agreement (including all related Subscriptions, Order Forms and exhibits), if the other party:

(a) fails to cure any material breach of this Agreement within forty-five (45) days after written notice of such breach: provided this right of termination will apply only to the Order Form or exhibit affected if the material breach does not affect the entire Agreement.

(b) ceases operation without a successor; or

(c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter). Notwithstanding the foregoing, Everyday may terminate this Agreement by providing ten (10) days’ prior written notice if the Client fails to make a payment when due. If the Client breach is such that it cannot be cured, then Everyday will have the right to terminate this Agreement, a Subscription or Order Form immediately. Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

9.3 Effect of Termination.

9.3.1 Termination of this Agreement, any Subscription or any Order Form pursuant to Clause 9.2 by Everyday does not affect any sums due to Everyday and all fees and other charges will be payable immediately, including fees or charges that are due or would have become due for the remainder of the Term of the Subscription had there been no termination. If the Client terminates this Agreement, any Subscription or any Order Form pursuant to Clause 9.2 Everyday shall refund any prepaid, unearned fees for Services.

9.3.2 Upon any termination of this Agreement or of all Subscriptions, the Client’s right to use the Services will terminate and they shall return all tangible portions of the Services, including any Documentation provided, within fourteen (14) days after termination. In addition, Everyday will return the Client Data to the Client in a format reasonably agreed upon between the parties.

9.3.3 Survival. Clauses 2 (Definitions), 4 (Restrictions), 5 (Ownership), 8 (Fees and Payment), 9 (Term of Agreement), 10 (Everyday Ltd. Warranty and Disclaimer), 11 (Client Warranties), 12 (Limitation of Remedies and Damages), 15 (Confidential Information) and 16 (General) will survive any termination or expiration of this Agreement.

10. Everyday Ltd. Warranty and Disclaimer.

10.1 Limited Warranty. Everyday warrants to the Client as follows:

(1) Everyday has all rights and authority necessary to enter into this Agreement and carry out its terms and conditions.

(2) Services will be performed by qualified personnel using commercially reasonable efforts.

(3) Everyday will perform any Professional Services and deliver any Deliverables in a professional and workmanlike manner.

(4) Everyday shall comply with all applicable governmental laws, ordinances, codes, rules, regulations and orders in its performance under this Agreement.

10.2 Remedy for Failure of Warranty Regarding Professional Services or Deliverables. Everyday will, at its sole discretion and as its sole liability and obligation to the Client for failure to provide Professional Services or Deliverables meeting this warranty, (a) reperform the non-conforming Professional Services or (b) re-deliver the non-conforming Deliverables at no additional cost to the Client if notified of the non-conformity within fourteen (14) days of delivery of the applicable Professional Service or Deliverable, or (c) terminate the applicable Statement of Work and refund the portion of fees attributable to such nonconforming Professional Services or Deliverables.

10.3 Disclaimer. This Clause 10 is a limited warranty and except as expressly set forth in this Clause 10 all services are provided “as is.” To the fullest extent permitted by law, neither Everyday nor its suppliers make any other warranties, express or implied, statutory or otherwise, including but not limited to warranties of merchantability, title, fitness for a particular purpose or noninfringement.

11. The Client Warranties.

The Client warrants as follows:

1. The Client has all rights and authority necessary to enter into this Agreement and carry out its terms and conditions.
2. The Client Data and Materials do not infringe upon any copyright, patent or trademark, or any other intellectual property or proprietary rights of any Third Party; and
3. The Client will comply with all requirements and restrictions under this Agreement, as well as all applicable laws, rules and regulations.

12. Limitation of Remedies and Damages.

12.1 Neither party will be liable for any loss of use, lost data, failure of security mechanisms, interruption of business or any indirect, incidental or consequential damages of any kind regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise.

12.2 Everyday and its suppliers’ entire liability to the Client will not exceed the amount actually paid by the Client to Everyday in the 12 months prior to the liability claim.

12.3 The limitations in Clause 12.2 do not apply to liabilities that cannot be excluded or limited by applicable laws.

12.4 The parties agree that the limitations specified in this Clause 12 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

13. Everyday Indemnification.

Everyday shall defend, indemnify and hold harmless the Client from and against any claim of infringement of a patent, copyright, trademark or other intellectual property right asserted against the Client by a Third Party based upon the Client’s use of the Service in accordance with the terms of this Agreement, provided that Everyday will have received from the Client: (i) prompt notice of such claim (but in any event notice in sufficient time for Everyday to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defence, and settlement (if applicable) of such claim, so long as such settlement does not involve any admission of liability or payment by the Client without the Client’s written consent; and (iii) all reasonable necessary cooperation of the Client.

14. The Client’s Indemnification.

Upon Everyday’s request the Client agrees to indemnify, defend and hold harmless Everyday from and against any and all claims, lawsuits, demands, actions or other proceedings brought against it by any Third Party due to, arising out of or related to (a) the Client’s or its Authorized Users’ use of the Service, or (b) the Client’s or its Authorized Users’ violation of any law, regulation or Third Party rights; either provided that the Client will have received from Everyday: (i) prompt notice of such claim (but in any event notice in sufficient time for the Client to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defence, and settlement (if applicable) of such claim, so long as such settlement does not involve any admission of liability or payment by Everyday without Everyday’s written consent; and (iii) all reasonable necessary cooperation of Everyday. The Client shall pay any and all costs, damages and expenses, including, without limitation, reasonable attorneys’ fees and costs awarded against or otherwise incurred by Everyday in connection with or arising from any such claim, lawsuit, action, demand or other proceeding.

15. Confidential Information.

Except as expressly authorized herein, any party receiving Confidential Information of the other will hold that Confidential Information in confidence and not disclose any Confidential Information. A receiving party may only use Confidential Information to use the Services, provide the Services and/or Professional Services or otherwise perform an obligation or exercise a right under this Agreement. The receiving party’s nondisclosure obligation will not apply to information which that party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of its own; (c) is rightfully obtained by the receiving party from a Third Party without breach of any confidentiality obligation; (d) is independently developed by employees of the receiving party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the disclosing party). The party receiving Confidential Information acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the receiving party, the disclosing party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

16. General.

16.1 Assignment. This Agreement will bind and inure to the benefit of each party’s permitted successors and assigns. Neither party will assign this Agreement (or any part thereof) without the advance written consent of the other party. Any attempt to transfer or assign this Agreement except as expressly authorized under this Clause 16.1 will be null and void.

16.2 Severability. If any provision of this Agreement will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

16.3 Governing Law; Jurisdiction and Venue; Attorneys’ Fees. This Agreement and any disputes arising out of or in connection with the Agreement (“Disputes”) will be governed by and construed in accordance with the laws of England.

Except as provided in this Clause with respect to injunctive relief, all Disputes will be finally resolved by binding and final arbitration before a single arbitrator, selected in accordance with the rules of the International Chamber of Commerce (ICC). Any arbitration will be conducted in London, England in the English language. After each party has been afforded a reasonable opportunity to present written and testimonial evidence in support of its position in any such arbitration proceeding, the arbitrator shall issue his/her decision and award, which will (i) be in writing, stating the reasons therefore, (ii) be based solely on the terms and conditions of the Agreement and (iii) except as provided in this Clause regarding injunctive relief, be final and binding upon the parties. The arbitrator shall not award punitive or exemplary damages. The parties, their representatives, and any other participants shall hold the existence, content, and result of arbitration in confidence. The provisions of this Clause 16.3 may be enforced by any court of competent jurisdiction. Notwithstanding the foregoing, either party may, at its sole discretion, seek injunctive relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief). The prevailing party in any legal proceeding brought by one party against the other party in a Dispute will be entitled to recover its legal expenses, including but not limited to the costs of any court or arbitration proceeding and reasonable attorneys’ fees.

16.4 Notices. Any notice which may be or is required to be given under this Agreement will be in writing, and will be deemed to have been received: (a) when delivered personally, (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (c) one (1) day after having been sent by a commercial overnight carrier with written verification of receipt. Either party may change its notice address by written notice to the other.

All notices related to or arising under this Agreement will be addressed to each party at the address set forth above.

16.5 Amendments; Waivers. No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.

16.6 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. No provision of any pre-printed order form, purchase order or other business form employed by the Client will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

16.7 Precedence. The terms of this Agreement and any Order Forms, will exclusively govern the purchase, installation and use of Services and Professional Services by the Client. Any terms and conditions on either party’s purchase orders, confirmations or other pre-printed forms are of no force or effect and are superseded by the terms of this Agreement. The terms of this Agreement will control in the case of any conflict between the terms of this Agreement and the terms of any Statement of Work or Order Form. Notwithstanding the foregoing, a Statement of Work may modify the terms of this Agreement if (i) the Statement of Work expressly identifies the term to be modified; (ii) the statement of work expressly states the parties’ intent to modify the term; and (iii) the Statement of Work is signed by both parties. Any such modification will apply only to the specific Statement of Work in which it is made.

16.8 Official Language. The official language of this Agreement and of any related documents is English

16.9 Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.

16.10 Anti-bribery. Each party agrees it shall comply with all applicable domestic, foreign and local laws and regulations, including but not limited to the U.K. Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 as amended pursuant to the 1988 Amendments and the International Anti-Bribery and Fair Competition Act of 1998), and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, all however, to the extent such laws and regulations may be applied within the jurisdiction of the domicile of the party.

ORDER FORM

The information below details the extent of supply of the Everyday software and services to be delivered to the Client.

Everyday will deliver the following to the Client through a “Software as a Service” Agreement.

SOFTWARE MODULES:

TERM:

The “Initial Term” will be for a period of 3 years.

SUBSCRIPTION FEES:

LICENCES (3 Years paid in advance): Concurrent Users

HOSTING & SUPPORT CHARGES: Included within LICENCE FEES

**TOTAL CHARGES:**

SERVICE LEVEL AGREEMENT

Everyday will provide the software solution as detailed in the attached Order Form on a Hosted Service provided by Google Cloud Services.

The on-line service will be delivered 7.00am to 7.00pm 7 days per week.

Additional access can be scheduled as required and agreed by both parties.

Down time for:

* Back-up routines
* Software upgrades

will be agreed with the Client to ensure minimum disruption to the production environment.

User Support, Implementation and Professional services will be supplied as detailed in any Professional Services Statement of Works.

PROFESSIONAL SERVICES “STATEMENT OF WORKS”

TBD as requested.