
MYDAY SOFTWARE SERVICE AGREEMENT

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Customer

BACKGROUND

- (A) The Supplier has developed certain computer programs, software applications and platforms which it makes available to subscribers via the internet, processing Personal Data on behalf of other businesses and organisations;
- (B) The Customer wishes to use the Supplier's service and process Personal Data in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: the general public and those students, employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.2(b).

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

Customer Closure Day: closure caused by an external influence, such as bad weather or local incident.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10

Contract / Subscription start date: that date upon which the tenant is made available to the Customer.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services (including but not limited to the Personal Data of employees and users of the Customer).

Documentation: the document made available to the Customer by the Supplier online via the web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

DPA: the Data Protection Act 1998 (DPA), the Data Protection Directive (95/46/EC), from May 25th 2018 - the General Data Protection Regulation (2016/679) (GDPR), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended) and all applicable laws and regulations relating to the processing of the Personal Data and privacy, including where applicable the guidance and codes of practice issued by the UK Information Commissioner or any other national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

Effective Date: the date of this Agreement.

Go Live Date: the date upon which the Onboarding Services are completed.

Initial Subscription Term: means the initial contract period from and including the Go Live Date.

Normal Business Hours: 9am to 5pm UK time, each Business Day except Friday which ends at 4:30PM UK time.

Onboarding Fee: means the fee payable by the Customer for the Onboarding Services provided by the Supplier under this Agreement;

Onboarding Services: means the development and configuration of the Software, supported by consultancy services, as detailed in Schedule 2.

Renewal Period: the period described in clause 15.1.

Services: the subscription services provided by the Supplier to the Customer under this agreement, described in the Documentation.

Software: the myday online software applications provided by the Supplier as part of the Services as detailed in Schedule 1.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions.

Subscription Term: has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy: the Supplier's policy for providing support in relation to the Services as set out in Schedule 3 or other website address as may be notified to the Customer from time to time.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Data Controller, Data Processor, Data Subject and Personal Data, Sensitive Personal Data, Special Category Data, processing, Right to Object and appropriate technical and organisational security measures shall have the meanings given to them in the DPA and the GDPR.

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

2. PURPOSE

- 2.1 This agreement between the Supplier and the Customer is to define the myday service provided to the Customer's Authorised Users. myday provides these Authorised Users with a portal and app experience which brings together many of the services already provided by the Customer, along with some new services within myday.
- 2.2 To provide the service, the Customer, with the Suppliers assistance, integrates and synchronises data including Personal Data to the Supplier's hosted platform. The Customer manages these integrations through the myday

Control Panel and ensures that Personal Data is only available within myday for the duration required by the Customer, as the Data Controller.

- 2.3 Where data is captured by the myday platform, the Customer and the Supplier shall ensure that Personal Data is stored only for the duration that it is intended

3. USER SUBSCRIPTIONS

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 4.3 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, the Supplier hereby 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 business operations.

- 3.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- (b) it shall maintain a written (documented), up to date count of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- (c) it shall permit the Supplier to audit the Services in order to establish the quantity of Authorised Users. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (d) if any of the audits referred to in clause 3.2(c) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices agreed at the Effective Date.
- (e) The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - (f) are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (g) facilitates illegal activity;
 - (h) depicts sexually explicit images;
 - (i) promotes unlawful violence;
 - (j) are discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (k) are in a manner that is otherwise illegal or causes damage or injury to any person or property;

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

- 3.3 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
- (d) subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.

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

4. ADDITIONAL USER SUBSCRIPTIONS

4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions. The Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Approval must not be unreasonably withheld or delayed.

4.3 If the Supplier approves the Customer's to purchase additional User Subscriptions, the Customer shall, in accordance with clause 10.2 (a), pay to the Supplier the relevant fees for such additional User Subscriptions as agreed at Effective Date. If the Customer has such additional User Subscriptions part way through the Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Subscription Term or then current Renewal Period (as applicable).

5. SERVICES

5.1 The Supplier shall:

- (i) provide the Onboarding Services; and
- (ii) during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

5.2 During the Subscription Term the Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during the maintenance window of 7.00 am to 8.00 am UK time required to facilitate software upgrades on a monthly cycle. Release dates are published at <http://status.myday.cloud> and typically require zero downtime. Where downtime is required, the Customer will be informed in advance by the Supplier, with a minimum of 10 Business Days notice; and

- (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 8 Normal Business Hours' notice in advance.
- 5.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy, in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 5.4 In the event of any loss of service, the Customer shall be entitled to either (selected at its absolute discretion):
 - (a) An extension of this Agreement for the period of outage; or
 - (b) A reduction in the value of the Subscription Fees for the next Renewal Period, calculated as the value of the Subscription Fees which are attributable to the period of service outage in question, as a proportion of the total period of the Subscription Term or Renewal Period (as applicable.)
- 5.5 The Customer acknowledges that the Supplier provides the Software using Microsoft Azure Services, a third party cloud provider in accordance with the service level agreement specified at: <http://azure.microsoft.com/en-gb/support/legal/sla/>.
 - (a) The Supplier shall procure that Microsoft: (a) meets its obligations under such service level agreement in relation to the provision of the Software, (b) meets its obligations within the premier support agreement between Microsoft and the Supplier dated July 2015 and (c) meets its obligations for Data Protection as a sub-processor.
- 6. CUSTOMER DATA**
- 6.1 The Supplier shall maintain a list of data entities in order to provide transparency to the Customer. The Supplier shall provide 10 Business Days notice for any changes to the this list.
- 6.2 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.
- 6.3 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The customer shall not hold the supplier responsible for any loss, destruction, alteration or disclosure if caused by any third party under the subcontract of the customer. Likewise, the supplier is responsible for any loss, destruction, alteration or disclosure cause by any third party under the subcontract of the supplier. The Supplier shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data, as such document may be amended from time to time by the Supplier in its sole discretion.
- 6.4 The parties acknowledge that, for the purposes of this Agreement, the Customer is the Data Controller and the Supplier is the Data Processor. The parties shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with their data protection duties under this Agreement and the DPA. Where the Supplier is Processing Personal Data on behalf of the Customer under or in connection with this Agreement, the Supplier shall:

- (a) only Process such Personal Data as is necessary to perform its obligations under this Agreement and only as expressly authorised by the Customer under this Agreement;
- (b) put in place appropriate technical and organisational security measures against any unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of or damage to such Personal Data
- (c) keep the Personal Data confidential and not disclose it to any third party without the prior written consent of the Customer;
- (d) take reasonable steps to ensure the reliability of any of the Supplier's personnel who will have access to Personal Data;
- (e) report all incidents of data loss or breach of confidence to the Customer immediately and in accordance with industry best practice and cooperate with the Customer's compliance and information security employees to support assessment, root cause analysis and identify any corrective action required; supporting the implementation of any required corrective action as agreed between the parties;
- (f) not cause or allow Personal Data to be transferred outside the European Economic Area without the prior written consent of the Customer;
- (g) not sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Customer;
- (h) where Personal Data is processed by a sub-contractor of the Supplier in connection with this Agreement, procure that such sub-contractor shall comply with the relevant obligations set out in this clause 6.3 as if such sub-contractor were the Supplier;
- (i) permit the Customer (or a representative) to inspect and audit the Supplier's facilities, equipment, documents and electronic data relating to the Supplier's data processing activities. Where the Suppliers facilities relating to the Customers data processing activities reside within a third party cloud solution (for example Azure or Amazon Web Services) then the Supplier agrees to the Customer auditing the procedures, documents and any interfaces that show how the data is being processed and the agreements with said third party.
- (j) Within 30 days following termination of this Agreement the Supplier shall, at the direction of the Customer, (a) comply with any other agreement made between the parties concerning the return or destruction of data, or (b) return all personal data passed to the Supplier by the Customer for processing, or (c) on receipt of instructions from the Customer, destroy all such data unless prohibited from doing so by any applicable law.
- (k) indemnify and keep the Customer indemnified against any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever to the extent arising from the Supplier's (or its sub-contractor's) unlawful or unauthorised processing, destruction and/or damage to Personal Data in connection with this Agreement.

7. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and

conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

8. SUPPLIER'S OBLIGATIONS

- 8.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, the Supplier:
- (a) does not warrant that the Customer's use of the Services 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 and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 8.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

9. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary agreed access to such information as may be required by the Supplier with the agreement of the Customer;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) ensure that as at the Effective Date and for the duration of the Subscription Term and any Renewal Period it has in place an Office 365 Service (Azure AD authentication service);
- (c) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (d) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (e) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (g) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

10. CHARGES AND PAYMENT

- 10.1 The Customer shall pay for the Onboarding Fee and the Subscription Fee for the User Subscriptions to the Supplier in accordance with this clause 10.
- 10.2 The Customer shall, on the Effective Date, provide to the Supplier approved purchase order information acceptable to the Supplier to enable the Supplier to:
- (a) to invoice the Customer:
 - (i) on the Effective Date for the provision of the Onboarding Services; and
 - (ii) on the Effective Date for the Subscription Fees payable in respect of the payment plan detailed in Schedule 5; and
 - (iii) subject to clause 15.1, on the first anniversary of the Go Live Date for the Subscription Fees payable in respect of the next Renewal Period, together with any Subscription Fees for additional User Subscriptions in accordance with clause 3 payable in respect of the period from the previous anniversary of the Go Live Date and in respect of the next Renewal Period.
- and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 10.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, after advising the Customer in writing disable the Customer's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 2.5% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.4 All amounts and fees stated or referred to in this Agreement:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 14.4(a), non-cancellable and non-refundable; fees in respect of each annual period shall be refundable in proportion to the unexpired period paid for in the event of early termination by any party.

- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer. Fees are fixed for the initial term and subject to a maximum of CPI +5% increase at renewal.

10.5

11. PROPRIETARY RIGHTS

- (a) The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software, the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- (b) The Supplier confirms that it has all the rights in relation to the Software, the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

12. CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 12.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.7 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as

required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

- 12.8 The Supplier acknowledges that the Customer is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate with the Customer to enable the Customer to comply with these information disclosure requirements.
- 12.9 Where a request for information submitted to the Customer concerns information held by the Supplier on behalf of the Customer, the Supplier shall provide the Customer with a copy of all the information requested in its possession or power in the form that the Customer requires within five working days of the Customer requesting the information (or such other period as the Customer may specify).
- 12.10 The Customer shall be responsible for determining in its absolute discretion whether information held by it which relates to the Supplier:
- (a) is exempt from disclosure; and/or
 - (b) is to be disclosed in response to a request for information.
- 12.11 This clause 12 shall survive termination of this Agreement, however arising.

13. INDEMNITY

- 13.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 13.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or

- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

13.5 The foregoing and clause 13.4 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. LIMITATION OF LIABILITY

14.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this Agreement;
- (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

14.2 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

14.3 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) for anything else which cannot be excluded or limited by law.

14.4 Subject to clause 14.2 and clause 14.3:

- (a) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement and in connection with a data protection breach under clause 6 shall be limited to £1,000,000.

15. TERM AND TERMINATION

15.1 This agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue until the end of the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

- (a) either party notifies the other party of termination, in writing, by providing no less than 3 months notice at any time prior to the end of the Initial Subscription term or the end of any Renewal period”, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

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

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

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) 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;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) 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;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) 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 15.2(d) to clause 15.2(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier will promptly permanently and irretrievably delete all electronic copies of the Customer Data from its computer systems (including without limitation servers, hardware and mobile devices) and from digital media in its possession or control; promptly destroy or deliver up to the Customer all hard copies of the Customer Data; and within 10 Business Days after termination of this Agreement, certify in writing to the Customer that this has been done and;
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

16. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or the Microsoft host or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17. CONFLICT

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

18. VARIATION

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

19. WAIVER

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

20. RIGHTS AND REMEDIES

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

21. SEVERANCE

- 21.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

- 21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

22. ENTIRE AGREEMENT

- 22.1 This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover.
- 22.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. Nothing shall limit the parties' liability for fraudulent misrepresentation.

23. ASSIGNMENT

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

24. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

25. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. NOTICES

- 26.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.
- 26.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 26.3 In the event the Supplier is required to change the backup schedule, policy or process, the Customer will be notified within 5 Business Days.

27. 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 laws of England.

28. 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 Software

myday is a subscription service developed on Microsoft technologies and includes the following key components:

- Dashboard / App Platform consisting of:
 - Portal framework including end-user personalisation
 - Out of the box myday apps
 - Ability for developer to add apps (HTML/JavaScript skills required)
- Azure Based PAAS Application providing:
 - Data synchronisation including ETL tool
 - Data storage
 - Notifications
 - Administration Control Panel
- On-premises Synchronisation Server providing:
 - Synchronisation from 3rd party databases to myday
- Native Mobile Applications providing access to
 - Last 2 iOS releases
 - Android 4.4 upwards
- Single Sign On Support for:
 - Other Azure Active Directory based services including Office 365
 - Moodle 2.4 upwards (required plug-in supplied during onboarding)
 - Blackboard (requires AutoSign Building Block)
 - Other applications where possible using generic hashing SSO technique

myday authenticates using Azure Active Directory (Office 365) including the dashboard, native apps, myday Control Panel and SharePoint Online experience. Other authentication methods are available including anonymous and Social Login.

A number of additional services are available and may be included in the Subscription Fees.

Overall, myday is a portal, dashboard or landing page for staff, learners and/or other stakeholders assisting in providing greater information to these consumers and improving participation with them by delivering a personal, targeted (by course or group) and public view from the institution.

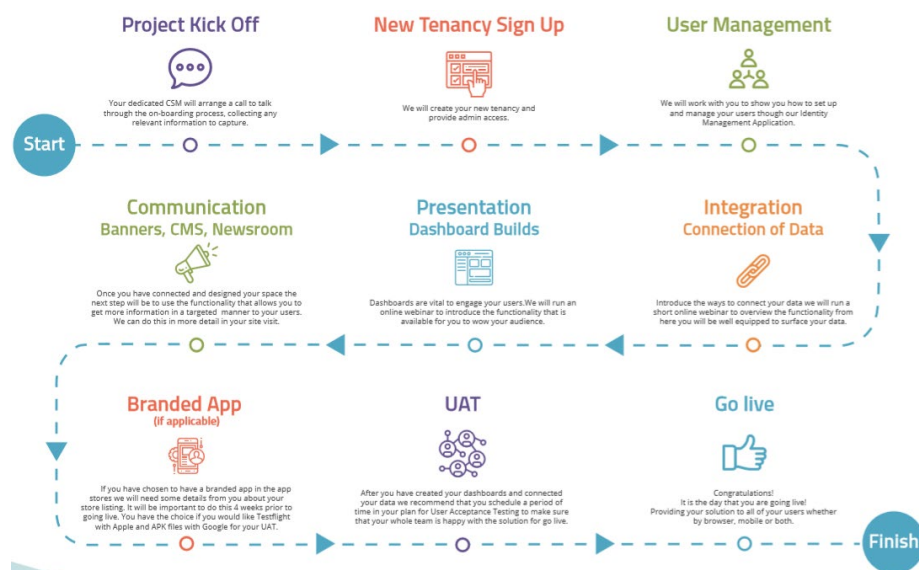
This list is exhaustive and the Customer will not expect to receive any additional software.

The Onboarding Services shall be provided in accordance with the myday customer journey (project plan as set out below), following signature of this Agreement. Onboarding focuses on providing skills to the Customer's own staff to configure and develop a myday experience for the Customer's users.

Onboarding consists of the following key components:

- Remote onboarding of:
 - Tenancy Sign-Up (currently using Azure AD for authentication and authorisation)
 - Sync Server Installation (for on-premises databases)
 - Initial Dashboard Setup
 - Initial Connector Setup
- Remote workshop, typically consisting of:
 - Discuss communications plan & key contacts
 - Completing sign-up process
 - Reviewing connector configuration and 3rd party configuration required
 - myday System Administration knowledge transfer
 - myday best practices
 - Review database requirements with MIS team and/or DBA.
 - Marketing components including logo, colours, themes, and branding
 - Mobile App assets review (optional)
- Remote Support for 90 days
 - Remote configuration support for all myday aspects
- Optional additional day on-site
 - Where remote support is insufficient or customer requires significant assistance, an day on-site can be arranged.
- Connectors
 - Connectors for any system for an existing myday dataset where the vendor maintains a reasonable market share will be developed as part of the onboarding costs. Timing will depend on current development workload.

The Customer will provide all requested technical information and staff to support the onboarding process.



1. myday Support Policy

(a) Purpose of This Document

This document accompanies and compliments the **myday** SaaS contract and details the general policies applicable to the **myday** support provided as part of the **myday** subscription.

(b) myday Updates

Updates that may address security issues, critical patches, general maintenance functionality, and documentation and shall be made available at the discretion of myday.

myday has no obligation to develop any future functionality or enhancements. If an update for a SaaS product is made available to you pursuant to these SaaS Support Policies, it shall automatically replace the previous version of the applicable SaaS product.

Where practical, myday will schedule such SaaS Updates during non-business hours.

(c) Technical Contacts

The customer technical contacts must be knowledgeable about our **myday** offering and associated customer owned platforms. The customer should establish processes to provide first line support for users of the SaaS offering within your organisation. Following reasonable efforts by your technical contacts to diagnose an issue the customer should make contact with myday for technical support. myday's representative will assign a severity to the case.

(d) Response times

myday will commit to a quick response of all support requests and can be logged during myday business hours 9AM until 5PM (4:30PM on Friday) using either email or telephone. Updates on support requests can be tracked by emailing or calling myday.

myday cannot guarantee resolution times. Resolution may consist of a fix, workaround, or other solution myday deems reasonable. myday will use all reasonable efforts to meet the target response times. Where a Critical case is opened with myday, the case will be worked on continuously 24x7 until a workaround or resolution is identified. Work will also cease if the incident can be downgraded to a lower severity.

(e) Response Times

Critical – 1 Hour

High – 4 Working Hours

Medium – 8 Working Hours

Low – 16 Working Hours

(f) Severity Definition

"Critical" will apply to live production use where the **myday** service is unavailable to the entire user population.

"High" will apply to live production use where the **myday** service is unavailable to a subset of users, a subset of the service or performance issues.

"Medium" will apply to production use where all or part of the **myday** service is unavailable or underperforming.

"Low" will apply to all other cases including non-production environments.

(g) Changing Severity Levels

Once a case is opened and the issue requires the changing of severity then the severity will be changed by myday and the customer will be notified. The customer may also request the severity be upgraded or downgraded based on the current business impact.

(h) Language

Technical support is only available in English

(i) Technical Support Scope

myday consists of the following services:

- The primary myday service, hosted in Microsoft Azure

- Mobile apps

- On-premises sync server

- myday** SharePoint based web parts, themes and layouts

Support is not included for:

- Customer or 3rd party owned services connected to **myday** including, but not limited to, networks, servers, databases and applications

- Windows and SQL server provided by the customer for the **myday** sync server

- Office 365 and services (SharePoint, Exchange etc.)

- Changes required after onboarding and go-live have been completed

- Custom Javascript and Custom CSS

(j) Support Definition

Technical support can be viewed as an insurance policy protecting and ensuring that the customer has a mechanism to raise issues with **myday**. Technical support is not a mechanism for consultancy. Please contact your account manager, call 01952 299300 or send an email to shello@pebblepad.com.

Definitions

myday Core & Configuration Data – data related to how myday is configured including but not limited to dashboards, tiles, connectors, databases/table connections, roles, bookmarks and label changes. This also includes internal News Feeds.

myday Content – data which is added to myday such as Content Management and Mapping Data for the Maps application. A recycle bin is provided with Content Management.

Customer Synced Data – data that has been synced to the cloud from a Customer hosted database via the on-premises Sync Server.

Availability & Disaster Recovery

myday is hosted in Microsoft Azure using key Azure services for high availability. Within the Azure platform all data has 3 local replicas in each region. All types of data are geo-replicated between two Azure regions (currently Northern and Western Europe).

In the event of failure in the primary region (currently Northern Europe), myday automatically fails over to the standby region (currently Western Europe).

Backup

Backups are performed daily as the table below:

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Core and Config	Incremental	Incremental	Incremental	Incremental	Incremental	Full	Incremental
Content	Full	Full	Full	Full	Full	Full	Full
Sync Data	None	None	None	None	None	None	None

Content is likely to migrate to a “full” followed by daily “incrementals” as this increases in size (as July 2016). Sync Data is not backed up as this is a copy of tables or views provided by the customer with a cached copy located on the on-premises sync server.

Retention

Backups are retained for 6 months.

Recovery Time Objective

In the event of a system failure requiring a complete rebuild of the myday platform onto Microsoft Azure, either in the same or different region, the Recovery Time Objective is 8 hours EXCLUDING Sync Data which would need to be resynced to myday from the on-premises sync server.

Recovery Point Objective

The Recovery Point Objective for Core, Config and Content is 24 hours with data restored from a previous nightly backup.

Recovery

The backup service provided by myday is designed for internal use only. Recovery would typically only be required in the event of a major outage or disaster.

The recovery of individual Configuration or Content items is extremely time-consuming therefore myday do not provide a recovery service for the Customer. In the case of high losses of data, the Customer should request a restore via the customer helpdesk for consideration.

Security

Access to backup data is restricted to essential myday personnel only.

