

# Issue Paper

**DATE:**

05/28/26

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve the agreement of a 12-month renewable premium Read & Write subscription for use by all students and staff within the Kenton County School District, with take-home access from Everway.

**APPLICABLE BOARD POLICY:**

**01.1 Legal Status of the Board**

**HISTORY/BACKGROUND:**

The Kenton County School District has consistently purchased a 12-month renewable subscription for students and staff from Everway (previously Texthelp Inc). Once the subscription is renewed, all schools and students will have full access to the program across all Windows, Google Chrome, and Mac devices. The subscription also provides support within KCS D's LMS, Schoology. While this subscription is available to all students, it is especially beneficial for those identified as special education students and/or English Language Learners. This program will enable students to be more independent in accessing core instruction and specially designed instruction outlined in their Individualized Education Programs (IEPs). This program will reduce the need for adult readers, enhance student reading skills, and foster student confidence and self-advocacy.

**FISCAL/BUDGETARY IMPACT:**

\$31,402.70 with annual renewal paid out of Special Education: IDEA B funds

**RECOMMENDATION:**

Approval of the agreement of a 12-month renewable premium Read & Write subscription for use by all students and staff within the Kenton County School District, with take-home access from Everway .

**CONTACT PERSON:**

Danielle Rice, Director of Special Education

  
Principal/Administrator

  
District Administrator

  
Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda. Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.*

# Quote

## #Q-356464

Quote must be attached to Purchase Order

May 12, 2026

**Valid Until August 30, 2026**

**COMMENCEMENT DATE:8/1/2026**

**Bill To**

**Kenton County Schools**

Accounts Payable

1055 Eaton Drive,

Fort Wright, Kentucky 41017

**ATTN:** Nancy Hoffman

**Ship To**

**Kenton County Schools**

Accounts Payable

1055 Eaton Drive,

Fort Wright, Kentucky 41017

**ATTN:** Tracy Adkins

# Everway

2401 Sawmill Pkwy Suite 10-11,

Huron, OH 44839,

United States

PO's or Payment Questions

[sales@everway.com](mailto:sales@everway.com)

Fed Tax ID: 26-2606260

**Everway Contact:**

Sales Operations

[salesops@everway.com](mailto:salesops@everway.com)

QTY	Item	Type	License Description	Sub Start Date	Sub End Date	Unit Price	Extended Price
13,895	R&W	Unlimited	Read&Write	8/1/2026	7/31/2027	USD 2.26	USD 31,402.70
<b>Total Unit:</b>							<b>USD 31,402.70</b>
<b>Tax:</b>							<b>USD 0.00</b>
<b>Total:</b>							<b>USD 31,402.70</b>

**NOTE: Credits, discount, adjustments, notes**

## RESOURCES INCLUDED WITH SUBSCRIPTION :

- For support, please reach out to:
  - [na-support@everway.com](mailto:na-support@everway.com)
  - 800-697-6575 with coverage from 9am-5pm Eastern Standard Time
  - Note that chat support is available 9am-7:15pm Eastern Standard Time
- Online Support Forum/Knowledgebase
- Training and Implementation resources including Feature & How to Videos, Getting Started Guides, Toolmatcher, Training Portal, Product Certification, Live & Recorded webinars, Just-In-Time Email Communications, Smart Start Sessions and In-App Walkthroughs
- Product Updates and Enhancements
- Additional Professional Development Offerings available for purchase

## FINANCIAL NOTES:

- Credit card payments can be accepted and are subject to a convenience fee applied to all credit card transactions over \$2,000.
- A copy of the Tax-Exempt ID Certificate must accompany order if applicable, otherwise sales tax may be charged. All quoted sales tax is estimated and subject to change on final invoicing.
- Our prices are subject to periodic increases
- Additional licenses, optional features, upgrades and enhanced functionalities may incur additional fee(s), and will be priced pursuant to Everway's then current price list and quoted by Everway's upon receipt of a written request from Customer.
- Quotes dated more than 120 days in advance of service term may be subject to pricing changes.

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By joint agreement of the Parties, Everway's Terms of Use applicable to this license term shall be modified as follows:

Section 10.3 (b) shall not be applicable to Customer. For avoidance of doubt, the Parties shall follow Kentucky state law in the unlikely event that undisputed fees should be unpaid (KRS 45.451 - 45.458).

Section 16.12 shall be amended to replace the State of Delaware with the Commonwealth of Kentucky for the governing law of the Agreement between the Parties.

Section 16.13 shall be amended to replace Boston, Massachusetts with Kenton County, Kentucky as the venue of any legal proceedings arising from the Agreement.

# Everway

**Everway LLC**

2401 Sawmill Pkwy Suite 10-11,  
Huron, OH 44839,  
United States

nafinance@everway.com

www.everway.com

June 9, 2025

**Everway vendor information and change to entity structure**

As a result of the significant change for our company, we have made some changes to our entity structure and our banking arrangements to allow us to better serve you, our valued customers.

**Timeline**

April 30, 2024, we announced that n2y LLC and Texthelp Inc had agreed to merge

January 9, 2025, we announced our new name, Everway

February 24, 2025 Texthelp Inc legally merged with n2y LLC

March 12, 2025 our name was changed to Everway LLC

**Entity Update**

As a result of the changes to our entity structure, our operating and contracting entity is Everway LLC EIN 26-2606260 as reflected on line 2 of the W9. This is the same EIN as previously held by n2y LLC.

For IRS reporting requirements, the W9 must reflect the name and EIN of the parent entity, which is Everway Holdco, LLC EIN 99-0735210. We do not contract under this entity; it is a holding company.

**Bank Changes**

We've provided details for our new banking partner to JP Morgan who offer more banking options.

**Dun and Bradstreet Reports**

Our D&B report is Everway LLC number: 100321616

The pages that follow outline key information you may need to update our details on your system. If there is further information have a look at our trust centre <https://www.everway.com/trust/> any outstanding questions please contact [nafinance@everway.com](mailto:nafinance@everway.com)

Yours sincerely,



Erinn O'Sullivan  
Chief Financial Officer

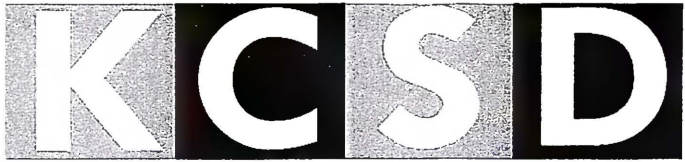
## Our information

The pages that follow outline key information you may need to update our details on your system. If there is further information have a look at our trust center <https://www.everway.com/trust/> any outstanding questions please contact [nafinance@everway.com](mailto:nafinance@everway.com)

Yours sincerely,



Erinn O'Sullivan  
Chief Financial Officer



Kenton County School District | *It's about ALL kids*

**THE KENTON COUNTY BOARD OF EDUCATION**

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

*Dr. Henry Webb, Superintendent of Schools*

**VENDOR ASSURANCES REGARDING PROTECTION OF  
PERSONAL AND CONFIDENTIAL INFORMATION**

**Data Security and Breach Protocols**

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as “KCBOE”) as defined by and in accordance with Kentucky’s Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the “Act”), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

“Personal Information” is defined in accordance with KRS 61.931(6) as “an individual’s first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver’s license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g.”

As provided in KRS 61.931(5), a “non-affiliated third party” includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act’s notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Everway LLC

Vendor Name

2401 Sawmill Parkway #10-11, Huron, OH 44839

Vendor Address

(800) 697-6575

Vendor Telephone

bids@everway.com

Vendor Email Address

*Elaine McElhill*

Signature by Vendor's Authorized Representative

Elaine McElhill | Director, Compliance

Print Name

May 20, 2026

Date

# Terms & Conditions of Use

Important please read carefully

## Background

The following terms and conditions, together with any Quotations and Schedules which are incorporated by reference, constitute an agreement (this or the **Agreement**) between the Everway Legal Entity identified on the Quotation (Everway), and the person or entity who has executed a Quotation (together with its Affiliates, the **Customer**). This Agreement governs access to, and use of Everway's Product(s) and associated Support.

EXECUTING A QUOTATION, SIGNING THESE TERMS AND CONDITIONS OR BEING GRANTED THE LICENSE TO USE THE PRODUCT INDICATES ACCEPTANCE OF THE AGREEMENT AND BINDS CUSTOMER TO THE TERMS AND CONDITIONS HEREIN AND ALL OTHER ELEMENTS OF THE AGREEMENT (AND CUSTOMER AGREES THAT NO TERMS PROVIDED BY CUSTOMER UNDER CUSTOMER'S ISSUED QUOTATION AND/OR CUSTOMER'S TERMS AND CONDITIONS SHALL APPLY). THEREFORE, PLEASE READ THE AGREEMENT AND ALL ELEMENTS THEREOF CAREFULLY BEFORE EXECUTING THE SAME AND/OR USING THE PRODUCT(S). IF CUSTOMER DOES NOT AGREE WITH THE AGREEMENT AND ALL ELEMENTS THEREOF, CUSTOMER SHOULD NOT EXECUTE A QUOTATION, EXECUTE THESE TERMS AND CONDITIONS, ACCESS, AND/OR USE THE PRODUCT(S). If the individual entering into this Agreement is doing so on behalf of a company or other legal entity, said individual represents and warrants that he or she: (i) has the authority to bind said entity and its Affiliates to the terms and conditions herein; (ii) has read and understands this Agreement; and (iii) agrees, on behalf of said Customer, to this Agreement. Payment under this Agreement or use of the Product pursuant to this Agreement by Customer indicates Customer's acknowledgment that the individual entering into this Agreement on behalf of Customer was authorized to do so.

Throughout this Agreement, Everway and the Customer may each be referred to, individually, as a "**Party**," and collectively, as the "**Parties**".

# 1. Definitions

- 1.1 The defined terms are set out in Section 17 of this Agreement.

# 2. Introduction

- 2.1 Everway agrees to provide the Customer with the Product(s) and Services (and associated Support) as set out in the Quotation. The Quotation shall be governed by the Agreement and any contrary or additional terms are deemed null and void and of no effect unless expressly agreed to in writing.

# 3. Term and Termination

- 3.1 The term of this Agreement is effective from and shall be in force from the Commencement Date until terminated in accordance with:
- 3.1.1 this Section 3; or
  - 3.1.2 where the Quotation specifies a fixed term, the duration specified therein (as applicable); or
  - 3.1.3 as otherwise specified in this Agreement

(the **Initial Term**). Where the Quotation specifies a fixed term with an autorenewal, this Agreement shall automatically renew for successive twelve (12) month periods (each an **Auto Renewed Term**) unless the Customer provides written notice of termination at least 30 days prior to the end of the Initial Term or the then current Auto Renewed Term (as applicable). Where the Quotation specifies a fixed term without autorenewal, if the Parties mutually agree to extend the Initial Term or any subsequent Agreed Renewed Term (defined below), this Agreement will renew on the same terms as stated on the Quotation for a twelve (12) month term (each an **Agreed Renewed Term**, and together with an **Auto Renewed Term**, each a **Renewal Term**) or on other terms set forth in a subsequent Quotation. Each Renewal Term and Initial Term are further defined as a **Term**.

3.2 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:

3.2.1 the other Party is in material breach of the Agreement and fails to cure such breach within thirty (30) days of receipt of written notice. For clarity, material breach shall include the Customer's failure to pay, undisputed invoices on the due date for payment and remaining in default not less than 45 days following the due date for payment; or

3.2.2 the other Party suffers an Insolvency Event.

3.3 Notwithstanding, and in addition to the foregoing, Everway may suspend the Customer's access to the Product(s) and/or terminate this Agreement if the Customer's use of the Product(s) is at any time in breach of Section 4, or is otherwise unlawful or if a Product feature becomes non-compliant with applicable laws or regulations, or gives rise to a safety or security risk.

3.4 Everway may discontinue:

3.4.1 a functionality of a Product from time to time provided that such discontinuation does not result in a material reduction to the Customer's use of the Products to which it is subscribed to (as set out in the Quotation);

3.4.2 a functionality of a Product that is dependent on a third-party service provider, in the event such third party service provider terminates or modifies its services or its terms of use in a way that materially impacts Everway's ability to provide the Product; and

3.4.3 a Product or a material functionality of a Product from time to time provided that prior to any discontinuation Everway will provide at least twelve (12) months' advance notice to the Customers that may be affected pursuant to this paragraph 3.4, except that this notice will not be required if the twelve (12) month notice period: (i) poses a security or IPR risk to the Product, (b) is materially economically or

technically burdensome or (c) would cause Everway to contravene any applicable law.

3.5 On termination of this Agreement for any reason: (a) all licenses granted under this Agreement, and Support provided by Everway, shall immediately terminate; (b) each Party shall return and make no further use of Confidential Information belonging to the other Party; (c) all undisputed Fees committed or owed by the Customer to Everway at the effective date of termination will become immediately due and payable; (d) Everway shall retain and/or destroy or otherwise dispose of any of the Customer Data in its possession in accordance with its Data Retention Policy; and (e) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination shall not be affected or prejudiced. Notwithstanding anything in this Section 3.5, Everway subscriptions are sold in prepaid 1-year increments. No refunds or partial-year prorations will be provided for early terminations.

3.6 The following provisions shall survive any termination of this Agreement: sections 3.5, 6, 9, 10, 11, 12, 13, 14 and 16.

## 4. License

4.1 Subject to Customer's compliance with the terms and conditions of this entire Agreement, including Customer's payments of applicable Product Fees, Everway hereby grants to the Customer a limited-term, non-exclusive, non-transferable license, without the right to grant sublicenses, to permit the Authorized Users to use the Product(s) specified in the Quotation and/or any Documentation, during the applicable Term of this Agreement, solely for the Customer's internal business operations.

4.2 The restrictions set forth in this Agreement represent conditions of the Customer's license. Accordingly, the Customer hereby agrees that: (i) the maximum number of Authorized Users it authorizes to access and use the Product(s) shall not exceed the number of Authorized Seats it has purchased at any time; (ii) it will require each of its Authorized Users to keep a secure password for their use of the Product(s) (if applicable), to change such password (if applicable) at regular intervals and in accordance with any security requirements that are imposed by the Customer, and to keep their password secured and

confidential; and (iii) it shall permit Everway or Everway's designated auditor to audit the Customer's compliance with this Agreement (**Audit**). If an Audit reveals that the Customer has underpaid Product Fees to Everway, then without prejudice to Everway's other rights, the Customer shall pay to Everway an amount equal to such underpayment as calculated in accordance with the prices set out in the relevant Quotation within ten (10) Business Days of the date of the relevant Audit.

4.3 The Customer shall not, and also shall be responsible in the event that its Authorized Users, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Products that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property,

and Everway reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to or remove any material that breaches the provisions of this paragraph 4.3.

4.4 The Customer shall not: (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Product(s) in any form or media or by any means; de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Product(s); (b) access all or any part of the Product(s) in order to build a product or service which competes with the Product(s); (c) sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Product(s) available to any third party except the Authorized Users, (d) attempt to obtain, or assist third parties in obtaining, access to the Product(s), other than as provided under this Section 4; (e) introduce or permit the introduction of, any Virus into Everway's network and information systems. The Customer is permitted to use

Everway's products in a manner reasonably consistent with the product's designed use. Specifically, the products Unique Learning System, Inspire, News2you, SymbolStix PRIME, L3 Skills, and Positivity allow for materials to be downloaded and/or printed for use in the classroom by the Customer. For avoidance of doubt, the content of any such downloaded or printed materials remain the exclusive intellectual property of Everway and are subject to the restrictions stated in this paragraph 4.4.

- 4.5 The Customer shall prevent any unauthorized access to, or use of, the Product(s) and, in the event of any such unauthorized access or use, promptly notify Everway.
- 4.6 Customer agrees to abide by the third party copyright notices applicable to the Products which are incorporated by reference within this Agreement and which are available on our [support site](#) and further detailed the documents referenced in Schedule 2. Details of such notices may be updated from time to time.
- 4.7 Where the Product(s) are deployed to Customer's students or employees, Customer shall make this Agreement and the Everway Product Privacy Policy available to its end-users and hereby accepts the respective terms and conditions on their behalf.
- 4.8 Third Party Software
- 4.8.1 The Product(s) made available to the Customer under the terms and conditions of this Agreement may use and/or contain software that is licensed to Everway (or to the Customer pursuant to this Agreement) by a third party (**Third Party Software**, where such third party is the **Third Party Software Licensor**).
- 4.8.2 If, during the Term, any Third Party Software is or will be no longer available to Everway (at all or in the way it was licenced to Everway at the date of this Agreement) then Everway may (at its absolute discretion): (a) procure the right for the Customer to continue using the Third Party Software; or (b) replace or modify the Product so that the replacement of the Product or the Product as so modified (in either case, the Replacement Product) no longer uses such Third Party Software (which may result in the Replacement Product having a lesser performance

and/or functionality relative to the performance and/or functionality of the Product when it used the Third Party Software).

4.8.3 If: (a) Everway decides that none of the aforementioned actions in Section 4.8.2 are appropriate for Everway; or (b) the Replacement Product has a performance and/or functionality that is materially worse than that as had been provided by the Product, then (in the case of (a) aforesaid) Everway may terminate the licence granted for the Product under Section 4.1 and (in the case of (b) aforesaid) the Customer may terminate this Agreement in part with regard to the part of the Replacement Product that represents a change to the Product, forthwith upon written notice to the other, and the parties shall use all their respective reasonable endeavours to seek to agree a reduction in the fee for the Replacement Software (relative to what would have been payable for the Product).

4.8.4 To the extent that any Third Party Software and its terms of use are referred to in Schedule 2 (expressly or otherwise incorporated by reference) (the **Third Party Software Terms**), the Third Party Terms shall have precedence over and correspondingly qualify any conflicting condition or term of this Agreement.

## 5. Services and Support

5.1 Where applicable, Everway shall provide the services indicated on the Quotation (**Services**) during the applicable Term and in accordance with these Terms of this Agreement.

5.2 Everway shall provide Support to the Customer in accordance with Schedule 1.

## 6. Compliance with Data Privacy Laws

6.1 It is Customer's sole responsibility to assess and determine whether it is subject to any laws or regulations protecting the privacy and security of personally identifiable information or Personal Data, including without limitation the European Union's General Data Protection Regulation (**GDPR**), the California Consumer Privacy Act (as amended by the California Privacy Rights Act), Connecticut's "An Act Concerning Personal Data Privacy and Online Monitoring,"

- and similar laws governing data privacy or data breach notification in any jurisdiction (collectively, the **Applicable Data Protection Laws**).
- 6.2 Each Party shall comply with all applicable requirements of the Applicable Data Protection Laws. This Section 6 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Applicable Data Protection Laws.
- 6.3 If Customer is: (i) considered a "controller" pursuant to the Applicable Data Protection Laws (or analogous term); (ii) providing Customer Personal Data to Everway to process on Customer's behalf; (iii) required to enter a data processing agreement with Everway (or analogous form of agreement) in order to comply with the Applicable Data Protection Laws; (iv) and/or otherwise subject to the GDPR, Customer must promptly notify Everway. Under such circumstances, for the purposes of the Applicable Data Protection Laws: (x) Customer is the controller (or analogous term) and Everway is the processor (or analogous term); and (y) the parties shall negotiate the terms of a data processing agreement to comply with the Applicable Data Protection Laws in good faith. If, however, the parties are unable to mutually agree on the terms of such an agreement, either Party may terminate the applicable Quotation or this Agreement without cause by providing two (2) business days' notice to the other Party.
- 6.4 If Customer is subject to the provisions of the Family Educational Rights and Privacy Act (**FERPA**), then to the extent Everway has access to data protected by FERPA (**FERPA Data**): (i) Everway is designated as a "school official" with "legitimate educational interests" in the FERPA Data, each term as defined under FERPA and its implementing regulations; (ii) Everway agrees to abide by the limitations and requirements imposed on school officials under FERPA; and (iii) Everway agrees to use FERPA Data only for the purpose of fulfilling its obligations under this Agreement, and will not monitor, share, or disclose such FERPA Data to any third party except as provided by this Agreement, as required by law, or as authorized in writing by Customer.
- 6.5 If Customer is an individual, Customer hereby represents that Customer is at least 18 years old. If Customer is an entity which allows Authorized Users under the age of 13 to submit personal information as defined in the Children's Online Privacy Protection Act (COPPA) to Everway in connection with its use of the Service, Customer agrees that it will be responsible for obtaining verifiable parental consent prior to making the Products available to such Users, and for providing a

copy of the terms and conditions set forth in this Agreement to the Authorized User's parent or guardian. Everway shall comply with COPPA and any rules or regulations promulgated thereunder.

## 7. Everway's obligations

- 7.1 Everway warrants that the Product(s) will perform at the time of the license grant materially in accordance with the Quotation and applicable Documentation, and any Support will be performed with reasonable skill and care. Everway further represents and warrants that the Services will be performed in a workmanlike manner with the degree of skill and care in conformance with industry standards prevailing at the time the Services are performed.
- 7.2 The warranty in paragraph 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Product(s) contrary to Everway's Documentation or other instructions, or modification or alteration of the Product(s) by any party other than Everway or Everway's duly authorized contractors or agents.
- 7.3 For any breach of the warranty in paragraph 7.1 by Everway while this Agreement remains in effect, Everway shall (at Everway's sole option and expense) correct, repair or replace the Product within a reasonable time period or provide or authorize a refund of any pre-paid, unused Product Fees or Service Fees, in which case the Agreement shall terminate, provided that: (i) Customer promptly notified Everway in writing of the Product's non-conformance with the warranty in paragraph 7.1; and (ii) Everway confirmed the issue subject to paragraph 7.2 above.
- 7.4 EXCEPT FOR THE WARRANTY SET FORTH IN PARAGRAPH 7.1, Everway HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. Everway SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 7.1, Everway MAKES NO WARRANTY OF ANY KIND THAT Everway IP, ANY PRODUCTS OR RESULTS OF THE USE THEREOF, OR ANY SERVICES WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR

FREE. Furthermore, Everway shall not be held 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 Product(s) and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 7.5 This Agreement shall not prevent Everway 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.
- 7.6 Everway warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 7.7 Everway shall perform daily back-ups of the Customer Data. In the event of any loss or damage to Customer Data, Everway shall use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Everway. Notwithstanding anything in this Agreement to the contrary, the foregoing constitutes Customer's sole and exclusive remedy arising from or related to any loss or damage to Customer Data. Everway shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Everway to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable.)

## 8. Customer's obligations

- 8.1 The Customer shall:
- (a) provide Everway with all necessary: (i) co-operation in relation to this Agreement; and (ii) access to such information as may be required by Everway in order to provide the Product(s), including but not limited to Customer Data, security access information and configuration services;
  - (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Everway may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorized Users use the Product(s) in accordance with the terms of this Agreement and shall be responsible for any Authorized User's breach of this Agreement (as if Authorized User were a party to this Agreement);
- (e) obtain and shall maintain all necessary licenses, consents, and permissions necessary for Everway, its contractors and agents to perform their obligations under this Agreement, including without limitation the Product(s); and
- (f) ensure that its network and systems comply with the relevant specifications provided by Everway from time to time.

## 9. Customer Data

- 9.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not "personal data" under Applicable Data Protection Laws and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 9.2 Without prejudice to the foregoing, the Customer expressly acknowledges that Everway does not create or validate any Customer Data processed or used in conjunction with the Product(s) and/or any associated outputs created or generated by the Customer in using, or via, the Products (**Outputs**). The Customer assumes sole responsibility for any results obtained from the use of the Products, Support and/or for any conclusions drawn from such use, and Everway disclaims all liability for any loss or damage caused by errors or omissions in any Outputs.
- 9.3 Customer hereby grants to Everway a limited, worldwide, royalty-free, non-exclusive, non-sublicensable, non-transferable license to use, process, modify, and make copies of the Customer Data to perform its obligations under this Agreement with respect to Customer's use of the Products for as long as Customer licenses the Products from Everway. Everway shall not be responsible or liable, in any way, for the deletion, destruction, damage or loss of any Customer Data which occurs through no fault of Everway or its providers.

## 10. Product Fees and Payment

- 10.1 The Product Fees are stated in the Quotation. The Customer shall pay the Product Fees to Everway in accordance with this Section 10 and the Quotation. No refunds will be made except as provided in paragraph 7.3 and paragraph 13.3. Product Fees shall be payable in the currency as set out in the Quotation and are exclusive of applicable sales tax (including value added tax), which shall be added to Everway's invoice(s) at the appropriate rate.
- 10.2 The Customer shall, on the Commencement Date, provide to Everway valid, up-to-date and complete payment details and any other relevant valid, up-to-date and complete contact and billing details and Everway shall:
- (a) invoice or bill (as applicable) the Customer on the Commencement Date for the Product Fees payable in respect of the applicable Term; and
  - (b) subject to paragraph 3.1 and as otherwise provided in the Quotation:
    - (i) bill the Customer using the relevant payments details on; or
    - (ii) invoice the Customer at least 30 days prior to each anniversary of the Commencement Date for the Product Fees payable in respect of the next Renewal Period (as applicable).
- 10.3 If Everway has not received payment of Product Fees within thirty (30) days after the due date, and without prejudice to any other rights and remedies of Everway and unless otherwise provided in the Quotation:
- (a) Everway may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Product(s) and Everway shall be under no obligation to re-activate access to any or all of the Product(s) while the relevant invoice(s) remain unpaid; and
  - (b) Customer agrees to pay a late charge of either (a) one and one-half percent (1.5%) or (b) the maximum interest rate permitted by law, whichever is greater, for any and all unpaid amounts.
- 10.4 Everway shall increase the Product Fees in line with the then current prices of Everway and its suppliers, including (without limitation) on an annual basis: (i) unless provided in the Quotation, automatically increasing Product Fees by five percent (5%) for a non-profit "Education" Customer and (ii) having the right to increase Product Fees by up to ten percent (10%) for a "Workplace" Customer (as determined by Everway at its sole discretion) provided Everway serves the

relevant Customer with thirty (30) days' prior written notice of such revised Product Fees. Any changes to the Product Fees pursuant to this clause 10.4 shall take effect upon expiration of the thirty (30) day notice period.

## 11. IPR Ownership

- 11.1 The Customer acknowledges and agrees that Everway and/or its licensors own all existing and future IPR in the Product(s), Documentation and any Support provided (together, the "Everway IP"). This Agreement does not grant the Customer any rights or licenses to, under, or in, the Everway IP beyond the scope of license granted in Section 4. Customer may not use the Products or Documentation in any manner or for any purposes that infringes, misappropriates, or otherwise violates any intellectual property right or any right of any person, or that violates any applicable law. The Customer agrees to inform Everway promptly of any infringement of the Everway IP that comes to the Customer's attention.
- 11.2 Everway confirms that it has all the rights in relation to Everway IP as is 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 shall safeguard and maintain the confidentiality of the other Party's Confidential Information and shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to ensure that the other Party's Confidential Information is not disclosed or distributed by its Representatives or otherwise in violation of the terms of this Agreement
- 12.2 Subject to paragraph 12.5, neither Party shall disclose the other Party's Confidential Information to any third party unless the other Party consents in writing to the disclosure of such Confidential Information and such third party enters into a confidentiality agreement on terms equivalent to those contained in this Agreement.

- 12.3 Subject to this Section 12, each Party shall only use the other Party's Confidential Information disclosed to it for the purposes of this Agreement including the purpose of exercising or performing its rights and obligations under this Agreement.
- 12.4 The provisions of this clause shall not apply to any Confidential Information that: (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this clause), (b) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party, (c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party; (d) the Parties agree in writing is not confidential or may be disclosed; or (e) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 12.5 A Party may disclose the other party's Confidential Information to those of its Representatives who "need to know" such Confidential Information in order to perform their obligations pursuant to this Agreement, provided that the disclosing Party: (a) informs such Representatives of the confidential nature of the Confidential Information before any disclosure is made, (b) is at all times responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 12 and (c) keeps a written record of those persons.
- 12.6 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice and opportunity to object to such disclosure as possible.
- 12.7 Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach of this Section 12 and that an affected Party shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Section 12
- 12.8 Neither Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party

(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.

- 12.9 Notwithstanding the above in this Section 12, by agreeing to this Agreement, you grant Everway a non-exclusive, royalty-free, worldwide license to use your organization's name and logo solely for marketing and promotional purposes, including, but not limited to, on Everway's website, in presentations, in marketing collateral (i.e. flyers, brochures), and in client lists. This use will not imply endorsement or partnership beyond the scope of our business relationship and will be subject to brand guidelines you provide.

## 13. Indemnity

- 13.1 Subject to paragraph 13.2 and Customer not being in breach of this Agreement, Everway shall defend the Customer, its officers, directors and employees against any loss, expense, or damages (including without limitation, reasonable attorney's fees) which may be incurred by Customer as a result of any court suit brought against Customer by a third party alleging that the Customer's use of the Product(s) or Documentation in accordance with this Agreement infringes any United States or United Kingdom patent effective as of the Commencement Date, copyright, or trade mark (an **IPR Claim**), and shall indemnify the Customer for any amounts actually awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Everway is given prompt notice of any such claim by the Customer within ten (10) days of receiving written notice of any threat or claim;
  - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Everway in the defense and settlement of such claim, at Everway's expense; and
  - (c) Everway is given sole authority to defend or settle the claim; and
  - (d) the Customer mitigates its losses insofar as is reasonable in the circumstances.

- 13.2 In no event shall Everway, its employees, agents and sub-contractors be liable to the Customer pursuant to clause 13.1 or otherwise to the extent that the alleged infringement is based on:
- (a) any content, material or information (including Customer Data) that has been uploaded, embedded or otherwise displayed or stored on the Product(s) by a Customer;
  - (b) use of any release of the Product other than the most current release made available to Customer;
  - (c) a modification of the Product(s) or Documentation by anyone other than Everway; or
  - (d) the Customer's use of the Product(s) or Documentation:
    - (i) in a manner not in accordance with this Agreement or the Documentation, if the third-party claim would have thereby otherwise been avoided;
    - (ii) with other software, services or products not provided by Everway, if the actual or alleged claim in question would have been avoided by the independent use of the relevant Product; or
    - (iii) after notice of the alleged or actual infringement from Everway or any appropriate authority.
- 13.3 If, during the Term, Everway reasonably believes that a Product infringes any third parties IPR or in connection with Everway's obligation under 13.1, then, Everway may (at its sole discretion): (a) procure the right for the Customer to continue using the relevant Product, (b) replace the Product with a non-infringing and functionally equivalent Product or (c) modify the Product so that it becomes non-infringing. If Everway believes in good faith that none of the aforementioned remedies are commercially reasonable, Everway may terminate the license for the allegedly infringing Product and refund all of the Customer's un-used, pre-paid, Product Fees from the date a third party claim arose for the allegedly infringing Product to the then-current date, whereupon this Agreement shall automatically terminate.
- 13.4 This clause 13 sets out the Customer's sole and exclusive rights and remedies, and Everway's (including Everway's employees', agents' and sub-contractors') entire obligations and liability, for any third party IPR claims for infringement.

- 13.5 Customer shall, at its expense, indemnify, defend and hold harmless Everway against any loss, expense or damages (including without limitation, reasonable attorney's fees) which may be incurred by Everway that may arise on account of Customer's acts or omissions, or those of its Authorized Users, including, without limitation, (i) all sales and use taxes and similar charges arising in connection with the use of the Product or the Services and all other federal, state and municipal taxes, interest, fines and penalties arising in connection with Customer's business activities and (ii) those relating to Customer's use of the Product or Customer's breach of any term, representation, warranty or covenant of this Agreement.

## 14. Limitation of liability

- 14.1 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Product(s) and the Documentation by the Customer, and for conclusions drawn from such use. Everway shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Everway by the Customer in connection with the Product(s), or any actions taken by Everway at the Customer's direction;
- (b) the Product(s) and the Documentation are provided to the Customer on an "as is" basis; and
- (c) the Parties agree that the Product(s) are not a tool for education or workplace assessment or diagnosis nor do the Product(s) treat any medical, mental health or learning condition.

- 14.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, COVER, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE

OTHERWISE FORESEEABLE. IN NO EVENT WILL EVERWAY BE LIABLE FOR ANY LOSS INCURRED BY CUSTOMER OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF CUSTOMER DATA WITH THE PRODUCTS OR THIRD-PARTY PRODUCTS. IN NO EVENT SHALL EITHER PARTY'S LIABILITY AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE LESSER OF EITHER ONE MILLION DOLLARS (\$1,000,000) OR THE TOTAL PRODUCT FEES PAID FOR THE AUTHORIZED SEATS DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE SOFTWARE IS PROVIDED TO CUSTOMER ON AN "AS IS" BASIS AND WITHOUT WARRANTY.

Notwithstanding the above, nothing in this Agreement excludes the liability (a) for death or personal injury caused by Everway's negligence;(b) for fraud or fraudulent misrepresentation; or (c) amounts due to Everway for unpaid invoices.

14.3 Nothing in this Agreement excludes or limits the liability of the Customer for any breach, infringement or misappropriation of Everway's IPR (including but not limited to breaches of Clause 4) or Confidential Information.

## 15. Notices

15.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company). Without prejudice to the foregoing, any notices required to be given to Everway or questions concerning this Agreement can be sent via email to support@n2y.com.

15.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

- 15.3 This Section 15 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.

## 16. General Provisions

- 16.1 Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond such Party's reasonable control including (without limitation) fire, flood, riots, natural catastrophes, pandemics, terrorist threats or acts, governmental intervention, declared emergencies, failing to grant a necessary license or consent or other act of god (each, a "**Force Majeure Event**"). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 40 continuous days, the Party unaffected by the Force Majeure Event may terminate this Agreement by giving 7 days' written notice to the affected Party.
- 16.2 Unless otherwise provided in a Quotation, Everway may modify or amend this Agreement, and any attachments hereto, in its sole discretion. The current versions of this Agreement will be posted on Everway's website - <https://www.everway.com/> and Customer's continued use of the Product(s) constitutes acceptance of modified or amended terms. Where any changes to this Agreement are material, Everway shall provide not less than 45 days' prior notice of any such modifications or amendments to Customer via the contact email address provided by Customer when submitting the Quotation and Customer's continued use of the Product(s) after such notice period constitutes acceptance of the modified or amended terms.
- 16.3 A waiver of any right or remedy is only effective if given in writing and provided under the terms specified by Section 15 and shall not be deemed a waiver of any subsequent right or remedy.
- 16.4 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 16.5 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.
- 16.6 The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted, save with regard to the Third Party Software Terms (as defined in Section 4.8.4). If any provision of this Agreement is deemed omitted under paragraph 16.7, the parties shall negotiate in good faith to agree upon a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.7 The Agreement, along with the Terms and Conditions, any Quotation(s), Schedules and attachments, each of which is incorporated herein by reference and made a part hereof, constitute the entire agreement between Everway and Customer with respect to Customer's use of the Product(s), and supersedes all other prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between Everway and Customer relating thereto and is binding upon them and their permitted successors and assigns. In the event of any conflict or inconsistency among the foregoing documents, and save as provided by Section 4.8.4, the order of precedence shall be: (1) the main body of the Terms and Agreement, (2) the applicable Quotation; (3) the applicable Schedule or attachment; and (4) the Documentation. Notwithstanding the foregoing, a Quotation may modify or amend certain provisions of the main body of the Terms and Conditions by making specific reference to the provision to be modified and setting forth the controlling provision, provided the Quotation is signed by both Parties.
- 16.8 This Agreement shall be binding upon and for the benefit of Everway, Customer, and their permitted successors and assigns. Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without Everway's prior written consent. Everway may, at any time, freely assign any of its rights or obligations under this Agreement.
- 16.9 Everway and Customer are independent contractors with respect to each other. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorize 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).

- 16.10 Nothing contained in this Agreement is intended or shall be construed to confer upon any other legal entity or person (other than Third Party Software Licensors as defined in Section 4.8.1) any rights, benefits, or remedies of any kind or character whatsoever, or to create an obligation of a party to any such legal entity or person.
- 16.11 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has delivered to the other at least one executed counterpart.
- 16.12 Unless otherwise provided in a Quotation, 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 interpreted in accordance with the law of Delaware, with regard for its choice or conflict of laws principles.
- 16.13 Unless otherwise provided in a Quotation, each Party irrevocably agrees that the courts of Boston, Massachusetts 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).
- 16.14 The following provisions shall survive any termination of this Agreement: paragraph 3.5, and Sections 6, 9, 10, 11, 12, 13, 14 and 16. Further, no expiration or termination of this Agreement by either Party shall affect any rights or obligations of either Party which are vested pursuant to this Agreement or any other provision necessary for the enforcement of this Agreement.

## 17. Definitions & Interpretation

- 17.1 The capitalized terms used in this Agreement have the meanings ascribed to them below, and this Agreement is to be interpreted and construed in accordance with the rules set forth below.

**Applicable Data Protection Laws:** has the meaning given to it in paragraph 6.2

**Audit:** has the meaning given to it in paragraph 4.2.

**Authorized Users:** those employees, agents and independent contractors of the Customer who are authorized by the Customer to use the Product(s), as further described in paragraph 4.2.

**Authorized Seats:** means the authorized seats purchased by the Customer as set out in an agreed Quotation, which entitles Authorized Users to access and use the Products in accordance with this Agreement.

**Business Day:** a day except any Saturday, Sunday, any federal legal holiday in the United States, or any day on which banking institutions in the State of Delaware are authorized or required by law or other governmental action to close.

**Commencement Date:** means the earlier of the subscription start date specified in an agreed Quotation or the first day of license to use the Product is granted.

**Confidential Information or CI:** means all information disclosed by one party hereto to the other party, whether orally or in writing, that: (a) is designated as proprietary or confidential; or (b) reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. Each party's Confidential Information also includes the terms and conditions of this Agreement, all Quotations (including pricing), trade secrets, know-how, inventions, techniques, processes, software programs and other IT related information, documentation, schematics, procedures, contracts, databases, business information, financial information, budgets, sales, marketing, insurance information, and compliance data, ideas, strategies, designs, projections, business plans, strategic expansion plans, products and product designs, sourcing information, potential product labeling and marking ideas, unpublished information relating to the IPR of either Party, and all communications between the Parties and other non-public information relating to the Parties' business.

**Contract Year:** each successive 12-month period while this Agreement remains in effect, the first commencing on the Commencement Date, and subsequently commencing on the corresponding anniversary of the Commencement Date.

**Customer Data:** means any data, documentation or Customer Confidential Information that is provided by the Customer, Authorized Users, or Everway on the Customer's behalf, for the purpose of using the Products.

**Customer Personal Data:** means any personal data which Everway processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

**Documentation:** the document(s) made available to the Customer by Everway from time to time which sets forth, among other things, the user instructions for the Product(s), applicable installation guides, service descriptions, technical specifications and online help files.

**Initial Term:** has the meaning given in paragraph 3.1.

**Insolvency Event:** means in relation to any Party, if that Party:

- (a) Files for protection under bankruptcy or insolvency laws, makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;
- (b) becomes or is declared insolvent, has a liquidator, receiver or administrative receiver appointed or passes a resolution for winding up (otherwise than for the purpose of a solvent consolidation or restructuring) or if a court makes an order to that effect;
- (c) by reasons of financial difficulties suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (d) is the subject of any events or circumstances analogous to any of the events described in paragraphs (b) and (c) in this definition in any applicable jurisdiction.

**Intellectual Property Rights or IPR** means patents, rights to inventions, copyright, trade marks and service marks, business names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how), trade secrets and all other similar or equivalent rights to any of the foregoing situated anywhere in the world, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights.

**Normal Business Hours:** 8:00 am to 5:00 pm Eastern Standard Time, each Business Day.

**Personal Data** : means information that relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular identifiable individual.

**Product** means Everway's online proprietary software applications and tools to enhance Authorized Users learning and working styles as is set out in the Quotation, together with any necessary fixes, updates or enhancements thereto but not including any additional products or services that Everway may make commercially available from time to time.

**Product Fees:** means all applicable fees payable by the Customer to Everway for the Authorized Seats as set out in the applicable Quotation.

**Quotation:** means Everway's standard written Quotation (and any other written renewal, amendment or revision thereto) to be signed by the Customer in accordance with this Agreement, and which sets out the details of the Customer's order for Products, Services and/or Support from Everway.

**Representatives:** means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisors.

**Renewal Term:** the period described in paragraph 3.1.

**Services:** means the Services provided by Everway in connection with the Product and purchased by the Customer, as set out on the applicable Quotation.

**Service Fees:** means all applicable fees payable by the Customer to Everway for the Services as set out in the applicable Quotation.

**Support:** means any support, training and/or maintenance services that are provided by Everway to the Customer pursuant to an agreed Quotation as further described in Schedule 1.

**Virus:** any thing or device (including any software, code, file, application or program) 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 application, program or data, including the reliability of any application, program or data (whether by re-arranging, altering or erasing the application, program 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.

17.2 Section, Schedule and paragraph headings are for convenience and are not to be given any meaning when construing or interpreting this Agreement.

- 17.3 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.
- 17.4 A reference to a company shall include any company, corporation or other business entity, wherever and however incorporated or established.
- 17.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 17.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 17.7 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, and as amended from time to time.
- 17.8 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.
- 17.9 A reference to writing or written excludes fax but not email.

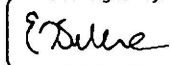
### **Acceptance of the Agreement**

Notwithstanding any other provision to the contrary, the Agreement (and all elements thereof) becomes a binding agreement between Everway and the Customer when (a) the Customer and Everway executes a Quotation, (b) executes these Terms and Conditions or (c) being granted the right to use the Products or Services. Any provision in any acceptance or acknowledgment hereof, inconsistent with or in addition to the Agreement (or any element thereof), are expressly rejected and shall have no force or effect, unless otherwise agreed in writing between the Parties. Further, the electronic signatures below shall constitute acceptance by the Parties of the authorized Quotation for the Products and Services listed thereon, subject to these Terms of Use. The Quotation may not be modified, added to or rescinded except through mutual agreement and acceptance in writing by both Parties.

**AGREED AND ACCEPTED:**

**Everway**

DocuSigned by:



By: \_\_\_\_\_  
EDA678AA7E9A409...

Name: Erinn O'Sullivan

Title: CFO

Date: 6/3/2026

**[CUSTOMER]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule 1 – Support**

**1. Support Services**

1.1 Everway shall, during the Term, provide the Product(s) and make available the Support to the Customer on and subject to the terms of this Agreement.

1.2 Everway shall use commercially reasonable efforts to make the Product(s) available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 4.00 am Eastern Time; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that Everway has used reasonable efforts to give the Customer at least 6 Normal Business Hours' notice in advance.

1.3 Everway will, as part of the Product(s) and at no additional cost to the Customer, provide the Customer with Everway's standard customer support services during Normal Business Hours in accordance with this Schedule in effect at the time that the Product(s) are provided. Everway may modify the Support services in its sole and absolute discretion from time to time.

1.4 If any performance issues arise, the Customer may contact Everway:

**(a) By Phone**

Support is available via phone. For support via phone please note the contact information changes by product; see below:

**(b) By Email**

The Customer can also communicate any issues to Everway by email. When emailing Everway about an issue, the Customer shall insert the name(s) of the relevant Product(s) that is/are experiencing issues within the subject line of the email. Support is available via email. For Maintenance and Support via email please note the contact information by \_\_\_\_\_ region \_\_\_\_\_ below:

North America/ Canada

Email: [na-support@everway.com](mailto:na-support@everway.com)

Phone: 800-697-6575 available Monday - Friday from 8 AM to 7:30 PM EST

Live chat: Monday - Friday 9 AM to 6:15 PM EST.

UK/ Rest of World

uk-support@everway.com and 028 94428105 with coverage from 9am-5pm Greenwich Mean Time

Note that chat support is available 9am-715pm Eastern Standard Time

**1.5 Training Materials / Technology Support Tools**

Everway shall provide the Customer with, and access to, any new training materials and technology support tools for Products(s), developed by Everway from time to time.

**1.6 Critical Hosting Service Interruption**

Everway may deliver the Product(s) either from its own servers or through a bona fide 3<sup>rd</sup> party hosting service. Any third-party hosting service shall be required to provide continuity of service guarantees in line with industry standards for delivery of streamed speech. Everway reserves the right to change the hosting service from time to time.

**2. Service Levels**

2.1 Everway shall use commercially reasonable efforts, being no less than prevailing industry standards in this regard, to ensure the Product(s) is/are available to the Customer 99.50% of the time in any calendar month. If it is not, the Customer may be eligible to receive the Service Credits described below.

2.2 In order to receive any of the Service Credits described above, the Customer must notify Everway by email or otherwise in writing within thirty (30) days from the time the Customer becomes eligible to receive a Service Credit.

2.3 The aggregate maximum number of Service Credits claimable for any and all Downtime Periods in a single Contract Year shall not exceed thirty days of Service Credit. Service Credits may not be exchanged for, or converted to, monetary compensation.

2.4 **Exclusions:** The service levels set forth in this Schedule 1 will not apply to any performance issues: (i) caused by factors outside of Everway's reasonable control; (ii) that resulted from any actions or inactions of the Customer or any third parties; or (iii) that resulted from Customer's equipment and/or third party equipment (not within the primary control of licensor). This Service Credits described herein shall be the Customer's sole and exclusive remedy for any failure by Everway to provide the Product(s) as a result of downtime.

### 3. Downtime and Service Credits

#### Definitions

- **"Downtime"** means that the Product(s) is/are not responding.
- **"Downtime Period"** means the amount of time the Product(s) is/are not available and must be 10 consecutive minutes or more.
- **"Monthly Uptime Percentage"** means the total number of minutes in the calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in the calendar month, divided by the total number of minutes in the calendar month.
- **"Scheduled Downtime"** means those times where Everway gives notification of periods of Downtime five (5) days prior to the commencement of such Downtime. There will be no more than twelve (12) hours of Scheduled Downtime per calendar year. Scheduled Downtime is not considered Downtime for purposes of this Agreement and will not be counted towards any Downtime Periods.
- **"Service Credit"** may be provided according to the following schedule:
  - **One day Credit:** Includes One (1) day of Product(s) to be added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is between 99.5% and 97.0%;
  - **One week Credit:** Includes Seven (7) days of Product(s) added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is between 97.0% and 95.0%;
  - **Two weeks Credit:** Includes Fourteen (14) days of Product(s) added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is less than 95.0%.

**Schedule 2 – Product Specific Terms & Conditions**

**1. Equatio**

**1.1 Definitions**

“Commercial Accessible Media Production” means the creation of accessible instructional materials which are for commercial distribution.

“Domain” means a distinct subset of the Internet with email addresses sharing a common suffix or under the control of a particular school, college, university or other organization.

“HE Disability Services Accessible Media Production” means the creation of accessible instructional materials for use in Higher Education institutions.

**1.2 License Types & Restrictions**

Equatio utilizes certain third-party MathML conversion technology. Therefore, certain features utilizing such technology are available to Customer depending on the type of license purchased by Customer, as specified on the Quotation (“License Type”), and as more fully described below.

License Type	Description
Equatio Single License Subscription	<p>Customer may install and use one copy of each of the Product(s) while this Agreement remains in effect.</p> <p>This license is restricted from use in connection with Commercial Accessible Media Production or HE Disability Services Accessible Media Production.</p>

<p>Equatio Group License Subscription</p>	<p>Customer may install and use one copy of each of the Product(s) for each Authorized User while this Agreement remains in effect. The number of Authorized Users within Customer’s group license is specified in the Quotation.</p> <p>This license is restricted from use in connection with HE Disability Services Accessible Media Production, except for those Higher Education Institutional Customers that have purchased Group License for their entire campus (all students). The foregoing exception applies only to a single campus. If the Customer’s Domain is shared with one or more additional campuses, students and staff associated with those additional campuses are not granted access to the Product(s).</p>
<p>Equatio Unlimited License Subscription</p>	<p>Customer may install and use one copy of each of the Product(s) for an unlimited number of Authorized Users while this Agreement remains in effect, including the use of HE Disability Services Accessible Media Production.</p>
<p>Equatio for Publishers License Subscription</p>	<p>Customer may install and use one copy of each of the Product(s) while this Agreement remains in effect.</p> <p>This license includes Commercial Accessible Media Production.</p>

**2. Third Party Software and Models**

Everway Products may incorporate third-party software components and/or third-party models as part of Product functionality. Further details, including applicable licence terms, usage policies and restrictions can be found here: [Third Party Software and Models](#) and [Open Source Software Disclosure](#), the terms of which are incorporated by reference into this Agreement.

By using a Product which includes third party software or models, Customer agrees that it shall, and shall ensure that its Authorised Users shall comply with all applicable third party licence terms, usage policies and restrictions.

To the extent of any conflict between Everway Terms of Use and third party software or model terms, the latter shall prevail in respect of any relevant third party terms.

This Section 2 forms part of this Agreement and any breach of this Section shall constitute a breach of the Agreement.