

Everlink Application Developer Terms of Use and API Licence Agreement

Effective as of 9th October 2020 (the "**Effective Date**") Everlink Limited, a company incorporated in England with registered number 11743281 and with its registered address at 17 Ashville Avenue, Eaglescliffe, Stockton-On-Tees, TS16 9AU, ("**Everlink**", "**us**", "**we**" or "**our**") has last updated this Application Developer Terms of Use and API Licence Agreement (the "**Agreement**").

Thank you for choosing to use Everlink's API

By accepting this Agreement, by downloading the API, you agree to be bound by this Agreement (including the obligation to make any payments in accordance with the Pricing Schedule) as a contract entered into between Everlink and you ("**Developer**", "**you**" or "**your**"). You agree to comply with this Agreement and that this Agreement governs your relationship with Everlink. So please read all of this Agreement carefully.

If you are entering into this Agreement on behalf of a company, organisation or another legal entity (an "**Entity**"), you are agreeing to this Agreement for that Entity and representing to Everlink that you have the authority to bind such Entity and its Group Members (defined below) to this Agreement, in which case the terms "Developer", "you", "your" or a related term herein shall refer to such Entity and its Group Members. If you do not have such authority, or if you do not agree with this Agreement, you must not accept this Agreement and must not download the API.

Everlink Application Developer Terms of Use and API Licence Agreement

Terms and Conditions

1. Definitions and interpretation

Definitions

In this Agreement, where the context so admits, the following words and expressions shall have the following meanings:

"Administrator"	has the meaning given in clause 4.1;
"API"	means the Application Programming Interface and any accompanying or related documentation, source code, executable applications and other materials made available by Everlink (including as part of any associated software development kit);
"API Key"	has the meaning given in clause 3.11;
"Application(s)"	means web or other software services or applications (including mobile applications) developed by you that utilise or interact with the API and/or Service Data and are authorised to be Published pursuant to this Agreement;
"Application Service Terms of Service"	has the meaning given in clause 6.8;
"Claim"	has the meaning given in clause 7.6;
"Compliance Period"	has the meaning given in clause 8;
"Confidential Information"	means all information (whether written, oral or in some other form) disclosed to or obtained by one party (whether directly or indirectly) from the other (whether before or after the signing of this agreement), including all information relating to that party's business, operations, systems, processes, products, trade secrets, know how, contracts, finances, plans, strategies or current, former or prospective clients, customers, partners or suppliers (together with copies made of any of the foregoing) and which information is marked as being confidential or might reasonably be assumed to be confidential, but excluding information which: (a) is available to the public other than because of any breach of this Agreement; (b) is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from

disclosing it to others; or

- (c) is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others.

Everlink's Confidential Information includes the API, the API Key, and the terms of this Agreement;

"Developer Data"	means all data, information and material inputted, uploaded or transmitted through the API by you (or anyone acting on your behalf) and/or any End User or otherwise via the Application;
"Developer Marks"	has the meaning given in clause 2.4;
"Developer User"	has the meaning given in clause 3.3;
"End User"	means an individual human end user of the Application(s), such use being governed, in part, by the End User Licence Terms and otherwise subject to this Agreement;
"End User Licence Terms"	means the end user licence terms as set out in schedule 1 which must form part of the Application Terms of Service (as defined below) to be entered into between you and each End User in accordance with clause 6.8;
"Everlink System"	means Everlink's Proximity Authentication System that generates and provides access to the Service Data;
"General Policies"	has the meaning given in clause 2.1;
"Group Member"	means at the relevant time, in relation to any entity, an entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that entity, where " control " means holding, directly or indirectly, a majority of the voting rights in it, or the power to direct or cause the direction of its management, policies or operations, whether through holding of voting rights, by contract or otherwise;
"Intellectual Property Rights"	means patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals,

	extensions, revivals and all accrued rights of action);
"Marketplace"	means any marketplace worldwide or other aggregator or public repository of code or applications;
"Modification"	has the meaning given in clause 8.1;
"Permitted Sector"	means the industry sector(s) in which you intend to offer the Applications to End Users, as proposed by you and agreed in writing by Everlink prior to initial download of the API, as may be modified or restricted from time to time in accordance with clause 8.2;
"Permitted Purpose"	means the use of the API in connection with your internal business purposes in accordance with the terms and any restrictions set out in this Agreement or for the benefit of Everlink;
"Pricing Schedule"	means the Everlink pricing schedule available on the Website or as otherwise communicated by Everlink in writing, as may be amended from time to time in accordance with clause 8.1;
"Publish"	means the making of any Application available to any End User or for any purpose other than for use by you as an End User for internal use;
"Service Data"	means all data transmitted through the API and made available by Everlink to you or any End User;
"Term"	has the meaning given in clause 12.1; and
"Website"	means Everlink's developer website available at www.everlinkapp.co.uk

Interpretation

In this Agreement (including the introduction and schedules) unless the context otherwise requires:

- (a) reference to a person includes a legal person (such as a limited company) as well as a natural person;
- (b) the Schedules form part of this Agreement and any reference to this Agreement includes its Schedules;
- (c) clause headings are for convenience only and shall not affect the construction of this Agreement;
- (d) reference to **"including"** or any similar terms in this Agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words; and

- (e) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation.

2. Licences

API and Service Data Licence

- 2.1 This Agreement governs your rights to use and access the API and Service Data for the purpose of developing, implementing and Publishing Applications. Your access to and use of the API and/or Service Data for the Permitted Purpose is governed by this Agreement, including any and all restrictions and policies implemented by Everlink from time to time with respect to the API and/or Service Data as set forth in this Agreement or as otherwise communicated to you ("**General Policies**").
- 2.2 Subject to full payment of any applicable fees in accordance with the Pricing Schedule and subject to the other provisions of this Agreement, including the restrictions set forth in clause 3, Everlink grants to you (and each Developer User (as defined below)) a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and licence during the Term to:
 - (a) use and make calls to the API to develop, implement and distribute Applications solely for use by End Users in connection with the Permitted Purpose and within the Permitted Sector(s);
 - (b) use, reproduce, distribute, and transmit Service Data to the extent necessary to support such Applications solely for use by End Users in connection with the Permitted Purpose and within the Permitted Sector(s); and
 - (c) market and sell Applications through a Marketplace in accordance with this Agreement.

Developer Licences

- 2.3 Subject to full payment of any applicable fees and subject to the other provisions of this Agreement, including the restrictions set forth in clause 3, you shall be entitled to market and sell Applications through any Marketplace in accordance with this Agreement. You grant to Everlink a non-exclusive, worldwide, fully paid-up, royalty-free licence, for as long as your Applications are Published to a Marketplace to:
 - (a) market and promote such Applications; and
 - (b) use, and display such Applications, including for evaluation purposes.
- 2.4 You further grant to Everlink a non-exclusive, worldwide, fully paid-up, royalty-free licence, during the Term, to use your name, Application name(s) and associated logos (collectively, "**Developer Marks**") to enable Everlink to exercise its rights and perform its obligations under this Agreement and publicise that you and your Application's use the API. Any use of Developer Marks shall be in accordance with your reasonable trademark usage policies if such policies are communicated to Everlink.
- 2.5 You grant to Everlink a royalty-free, fully paid-up, worldwide, transferable, sub-licensable, irrevocable and perpetual licence to implement, use, modify, commercially exploit and/or incorporate into Everlink's services, the Everlink System and/or the API any suggestions, enhancement requests, recommendations or other feedback the Everlink receives from you from time to time.

3. Scope of authorised use and restrictions

3.1 The licences granted by Everlink to you in clause 2 of this Agreement are conditional upon your strict adherence to the following restrictions and compliance with your responsibilities as set forth herein.

3.2 In order to access the API, API Key or Service Data you will be required to provide certain information (such as identification, contact details, payment details and proposed Permitted Sector(s)) as part of the registration process for the API, or as part of your continued use of the API. Any registration information you give to Everlink must always be accurate and up to date and you must inform Everlink promptly of any updates.

3.3 Only you are licensed to access and use the API, API Key and Service Data and solely for your internal business purposes. Use by you includes use by:

- (a) your employees;
- (b) any contract staff who are working for you; and
- (c) any other person working on your behalf;

provided that, in each of these cases, the person concerned is accessing and using the API, API Key and Service Data exclusively on your behalf, for the above purposes, and with your authorisation (each a "**Developer User**").

3.4 You shall be and remain responsible for all acts and omissions of all Developer Users as if you had acted and/or omitted to act yourself and an act or omission by Developer Users, that would be a breach of this Agreement were such act or omission made by you shall be deemed to constitute an act or omission by you.

3.5 You shall comply with (and shall ensure and procure that each Developer User and End User complies with (as applicable)):

- (a) this Agreement;
- (b) the End User Licence Terms;
- (c) the General Policies; and
- (d) any terms of use or service and privacy and/or cookies policy that Everlink may publish online through the Website, each as updated by Everlink from time to time, all of which are incorporated into this Agreement by reference.

3.6 You shall not (and shall procure that Developer Users and End Users do not (as applicable)):

- (a) except as expressly permitted by this Agreement, permit any third party to access or use the API, Service Data and/or Everlink System or use the same on behalf of any third party (which includes operating any form of facility on behalf of any third party or operating a software bureau or similar service) or through Applications or otherwise, repackage or resell the API or Service Data;
- (b) copy or translate the API and/or Service Data, other than in relation to your or the Developer Users or End Users use of the Application(s);
- (c) modify, adapt or create derivative works from the API and/or Service Data (except strictly to the extent that you are permitted to do so under applicable

law), including in order to alter the functionality of the API to reduce its reliance on and/or the number of calls it makes to the Everlink System;

- (d) attempt to or reverse engineer, modify, decrypt, extract, disassemble or decompile or derive source code, underlying ideas, algorithms, structure or organisational form from the API, API Key, Service Data and/or Everlink System (except strictly to the extent that you are permitted to do so under applicable law), including in order to:
 - (i) build a competitive product or service;
 - (ii) build a product using similar ideas, features or functions of the API and/or Everlink System; or
 - (iii) copy any ideas, features, functions or graphics of the API and/or Everlink System;
- (e) use or make calls to the API to develop, implement and distribute Applications intended for use outside of the Permitted Sector(s) or otherwise permit any Applications to be used by End Users outside of the Permitted Sector(s);
- (f) develop Applications to substantially replicate products or services offered by Everlink, including functions or clients on platforms (such as iOS or Android) where Everlink offers its own client or function, provided that each party agrees that the other party may develop and publish applications that are similar to or otherwise compete with such party's applications. Applications may not use or access the API and/or Everlink System in order to monitor the availability, performance, or functionality of any of the API and/or Everlink System or for any similar benchmarking purposes;
- (g) obscure, amend or remove any copyright notice, trade mark or other proprietary marking on, or visible during the operation or use of, the API and/or Service Data and/or Everlink System or any other product or service offered by Everlink;
- (h) attempt to gain unauthorised access to or interfere with the proper working of the API, Service Data and/or Everlink System and, in particular, must not attempt to circumvent security, licence control or other protection mechanisms, or tamper with, hack into or otherwise disrupt the API and/or Everlink System or any associated website, computer system, server, router or any other internet-connected device;
- (i) provide false identity information to gain access to or use the API, API Key and/or Service Data;
- (j) without express written consent from Everlink, forge headers or otherwise manipulate identifiers in order to disguise the origin of any Developer Data transmitted through the API and/or Everlink System; or
- (k) use the API and/or Service Data to:
 - (i) upload, store, post, transmit, distribute, link to or otherwise make available, or advertise or promote any content that infringes any Intellectual Property Rights or data protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, abusive, harassing, inciteful of violence or hatred, blasphemous, discriminatory (on any ground), liable to cause anxiety, alarm or

embarrassment, knowingly false or misleading, or that does not comply with all applicable laws and regulations or is otherwise objectionable or prohibited as set out in any acceptable use policy published online by Everlink, as updated by Everlink from time to time;

- (ii) impersonate any person or entity or otherwise misrepresent your relationship with any person or entity;
 - (iii) engage in any fraudulent activity or further any fraudulent purpose;
 - (iv) "stalk" or otherwise harass another person or collect or store unauthorised personal data in relation to any individual;
 - (v) transmit or distribute any unsolicited or unauthorised advertising, marketing or promotional material or other form of solicitation (spam) within the Application(s) or in relation to Everlink;
 - (vi) transmit or distribute any virus and/or other code that has contaminating or destructive elements;
 - (vii) interfere with, modify or disable any features, functionality or security controls of the API, API Key and/or Service Data; or
 - (viii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the API, API Key and/or Service Data;
- (l) use the API, API Key and/or Service Data in any manner that does or could potentially undermine the security of the API, API Key, Service Data and/or Everlink System or any other data or information stored or transmitted using the API and/or Everlink System; and/or
- (m) without the express permission of the End User, store, track or otherwise record (other than on a temporary basis as strictly required to administer the Application(s)) the Service Data or any data derived or inferred by the use of Everlink's Everlink System or API, or use any such data to create a location history for any End User;

and shall not permit any other third party to do any of the foregoing.

3.7 You agree and acknowledge that:

- (a) it is your sole responsibility to ensure you have the software and equipment (of appropriate specification and compatibility with the API) and internet connection to enable you to connect to the API;
- (b) you are solely responsible, and that Everlink has no responsibility or liability of any kind, for the content, development, operation, support or maintenance of Applications. Without limiting the foregoing, you are solely responsible for:
 - (i) the technical installation and operation of your Applications;
 - (ii) creating and displaying information and content on, through or within your Applications;
 - (iii) ensuring that your Applications do not violate or infringe the Intellectual Property Rights of any third party; and

- (iv) ensuring that your Applications do not contain or introduce malicious software into the API, any Developer Data or the Everlink System or other data stored or transmitted.
- 3.8 You shall comply with the technical and policy-implemented limitations of the API and the restrictions of this Agreement in designing and implementing Applications. Without limiting the foregoing, you shall not violate any explicit rate limitations on calling or otherwise utilising an API (as notified to you from time to time).
- 3.9 You shall not make any modifications to any Service Data, other than as reasonably necessary to modify the formatting of such Service Data in order to display it in a manner appropriate for the pertinent Applications.
- 3.10 If Everlink believes, in its sole discretion, that you have violated or attempted to violate any term, condition or the spirit of this Agreement, the licences afforded to you pursuant to this Agreement may be temporarily or permanently revoked, with or without notice to you.
- 3.11 In order to use and access the API, you must obtain API security credentials (an "**API Key**") after completion of the registration process. You may not share your API Key with any third party (except any Developer Users). You shall keep such API Key secure and confidential, and you shall use the API Key as your sole means of accessing the API. You will not misrepresent or mask either your identity or your Developer Users' identity when using the API. The safety of the API Key is your sole responsibility.
- 3.12 You shall, upon request, certify to Everlink your compliance with the terms of this Agreement, providing such opportunity to verify the same as reasonably requested by Everlink. You further acknowledge and agree that Everlink or its appointed representatives have the right, on reasonable prior notice, to inspect and audit your facilities and operations at any time during the term of this Agreement, solely for the purposes of verifying your compliance with the terms of this Agreement and you agree to provide reasonable access, during normal working hours and subject to your reasonable security procedures, to your premises, systems and personnel and to provide all reasonable co-operation (including the provision of requested information) for the purposes of such inspections and audits.

4. Administrator and Developer Users

- 4.1 During registration, you shall designate one contact as the responsible party for communication with Everlink on your behalf during the Term ("**Administrator**"). Your Administrator shall have the authority to bind you, except that (where applicable) another of your duly authorised representatives may change your Administrator by giving written notice to Everlink.
- 4.2 You are solely responsible for determining the skill, competence, character and other attributes of all Developer Users.
- 4.3 You shall ensure that each Developer User shall, as a condition of being granted access to the API, be required by you to acknowledge the obligations on you under this Agreement respecting authorised use (and restrictions on use) of the API and agree to comply with the same. You shall immediately notify Everlink if you become aware of any breach of this Agreement by any Developer User.
- 4.4 You shall be responsible for all access to and use of the API and/or Service Data by Developer Users. You shall be responsible for ensuring the security and confidentiality of all API Keys, log-on identifiers, including usernames and passwords, assigned to, or

created by, the Administrator or any Developer User in order to access or use the API and/or Service Data.

- 4.5 You shall promptly notify Everlink upon becoming aware of any unauthorised access to or use of the API and/or Service Data, you and shall provide all reasonable assistance to Everlink to bring an end to such unauthorised access or use. You shall use all reasonable endeavours to prevent unauthorised use and shall terminate any such unauthorised use.

5. Charges and payment

- 5.1 In consideration for the rights granted to you under this Agreement, Everlink shall be entitled to charge fees for any use of the API by you or on your behalf in accordance with the Pricing Schedule.
- 5.2 Unless otherwise expressly stated, any fees set out in the Pricing Schedule are exclusive of VAT. Where VAT is payable in respect of some or all of the services or licences provided to you, you shall pay Everlink such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay the applicable fees.
- 5.3 Everlink shall be entitled to invoice you for any fees incurred during each calendar month immediately following the end of that calendar month. Unless you otherwise request, Everlink will send all invoices to the email address given by you on registration in accordance with clause 3.2.
- 5.4 You shall pay each invoice within 10 days of receipt, either by bank transfer to the Everlink bank account given on the invoice or by direct debit.
- 5.5 If you fail to make any payment by the due date, then, without limiting Everlink's remedies under clause 12, Everlink shall be entitled to charge interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6. Warranties

- 6.1 Everlink does not make or give any representation or warranty as to the accuracy, completeness, currency, correctness, reliability, integrity, usefulness, quality, fitness for purpose or originality of any of the API, Everlink System or Service Data.
- 6.2 Except as expressly set out in this Agreement and subject only to clause 10.1, no implied conditions, warranties or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose, will apply to the API, API Key, Everlink System and/or Service Data or to anything supplied or provided by Everlink under this Agreement. In particular, Everlink does not warrant that the operation of the API, API Key, Everlink System and/or Service Data will be uninterrupted, contaminant-free or error-free, or that they will meet your requirements
- 6.3 You agree that you are solely responsible for your selection of the API and/or Service Data and for all use you make of them, and all reliance you choose to place on the API, Everlink System and/or Service Data.
- 6.4 You shall ensure that your use of the API and/or Service Data, complies, in all respects, with all applicable laws, regulatory requirements, mandatory standards and codes of practice of any competent authority for the time being in force.

- 6.5 To the extent the Application(s) transmit Service Data to End Users, you represent and warrant that you have notified all End Users of such Applications that Everlink is not responsible for the privacy, security or integrity of such Service Data. You further represent and warrant that to the extent the Application(s) store, process or transmit Service Data, neither you nor the Application(s) will, without appropriate prior user consent or except to the extent required by applicable law:
- (a) modify the content of Service Data in a manner that adversely affects the integrity of Service Data;
 - (b) disclose Service Data to any third party other than Developer Users and End Users; or
 - (c) use Service Data for any purpose other than the Permitted Purpose.
- 6.6 You shall maintain and handle all Service Data in accordance with privacy and security measures reasonably adequate to preserve the confidentiality and security of all Service Data and all applicable privacy laws and regulations, and in no event less protective than the measures and policies set forth in this Agreement.
- 6.7 You represent, warrant and covenant that:
- (a) the Developer Data, Application(s) and Developer Marks do not and will not violate, misappropriate or infringe upon the Intellectual Property Rights of any third party;
 - (b) you will comply with all applicable laws and regulations, and maintain all licences, permits and other permissions necessary to develop, implement and Publish your Applications; and
 - (c) you have all right, power and authority to grant the licences granted to Everlink herein.
- 6.8 You represent, warrant and covenant that you will include the End User Licence Terms in the Application terms of service ("**Application Terms of Service**") that govern use of the Applications by each End User. Such End User Licence Terms are a minimum set of provisions and you may have more detailed and exhaustive Application Terms of Service that apply as between you and the End Users. You may change the term references of the End User Licence Terms to stylistically match the terms used in your Application Terms of Services, provided that such amendments do not substantively alter the content of the End User Licence Terms.

7. Intellectual Property Rights

- 7.1 Other than as set out in this clause 7, nothing in this Agreement shall cause the ownership of any Intellectual Property Rights belonging to one party to be transferred to the other. The rights granted to you to use the API and/or Service Data under this Agreement do not convey any additional rights in the API, and/or Service Data, or in any Intellectual Property Rights associated therewith or with the Everlink System.
- 7.2 Everlink and/or its licensors shall, as between the parties, be and remain the owner of all Intellectual Property Rights in Everlink's brands, trademarks and logos, the API, the Everlink System and the Service Data. Except as expressly permitted by this Agreement, you shall not use any of Everlink's Intellectual Property Rights without Everlink's prior written consent.

- 7.3 You shall promptly bring to the attention of Everlink any improper or wrongful use of any Intellectual Property Rights of Everlink which comes to your notice. You shall assist Everlink in taking all steps to defend Everlink's Intellectual Property Rights, but you may not institute legal proceedings of your own accord.
- 7.4 You and/or your licensors shall, as between you and Everlink, remain the owner of all Intellectual Property Rights in the Developer Data. You hereby grant Everlink, free of charge, a perpetual, royalty-free, worldwide, non-exclusive licence to host, store, reproduce, adapt, modify, use, translate, extract data from, perform, display and distribute the Developer Data to such extent as is necessary to enable Everlink:
- (a) to provide the API and Service Data;
 - (b) to perform its obligations under this Agreement; and
 - (c) to monitor and improve the functionality of the API and the Everlink Technology through the analysis of the Developer Data in an aggregated form and to use the results of that analysis in marketing, promotion and reporting.
- 7.5 You warrant that you own the Developer Data and/or are otherwise entitled to grant the foregoing licence.
- 7.6 You agree to indemnify Everlink against any loss, damage or expense (including reasonable legal costs) which Everlink incurs or becomes liable for as a result of any claim by a third party that the receipt, access, use or possession of the Developer Data infringes the Intellectual Property Rights of any third parties (a "**Claim**").
- 7.7 Everlink shall: (i) immediately notify you as soon as is reasonably practicable of the Claim; (ii) provide any information reasonably required by you in relation to the Claim in a timely manner; (iii) make no admissions in relation to the Claim without the prior written consent of you; and (iv) at your request and expense, allow you to conduct the defence (and settlement if any) of the relevant Claim.

8. Modifications

- 8.1 You acknowledge and agree that Everlink may modify this Agreement, the API, the General Policies, the End User Licence Terms and the Pricing Schedule from time to time (a "**Modification**"). You will be notified of a Modification through notifications or posts on the Website or through a form of direct communication from Everlink. You further acknowledge and agree that such Modifications may be implemented at any time and without any notice to you. You shall, within thirty (30) days from the date of first notice of any Modification(s) (or such shorter period of time specified in the notice of the Modification(s)) (the "**Compliance Period**") comply with such Modification(s) by implementing and using the most current version of the API and making any changes to Applications and any Application Terms of Service that may be required as a result of such Modification(s). You acknowledge that a Modification may have an adverse effect on Applications, including but not limited to changing the manner in which Applications communicate with the API and display or transmit Service Data. Everlink shall have no liability of any kind to you or any End User with respect to such Modifications or any adverse effects resulting from such Modifications. Your continued access to or use of the API following the Compliance Period shall constitute binding acceptance of the applicable Modification(s).
- 8.2 You may, from time to time, request to modify the scope of the Permitted Sector(s) but no such modification shall take effect unless confirmed in writing by Everlink (which Everlink may or may not do so at its complete discretion). You acknowledge that the scope of the Permitted Sector(s) is, unless otherwise agreed in writing with Everlink,

subject to the subsequent grant of exclusivity to other Everlink customers or partners within particular sectors and territories. Accordingly, Everlink shall have the right at any time to modify or restrict the Permitted Sectors by notice to you.

9. Support

This Agreement does not entitle you to any support for the API unless you make separate arrangements with Everlink for such support. You are solely responsible for providing all support and technical assistance to End Users and you agree to use commercially reasonable efforts to provide reasonable support to such End Users.

10. Exclusions and limitations

- 10.1 Nothing in this Agreement limits or excludes either party's liability: (a) for death or personal injury caused by its negligence; (b) for fraudulent misrepresentation or for any other fraudulent act or omission; (c) under Part I of the Consumer Protection Act 1987; or (d) for any other liability which may not lawfully be excluded or limited.
- 10.2 Subject to clause 10.1, Everlink shall not be liable (whether from breach of contract, tort (including negligence), breach of statutory duty, under an indemnity or otherwise) for any: (a) loss of profit; (b) loss of sales, turnover, revenue or business; (c) loss of customers or contracts; (d) loss of or damage to reputation or goodwill; (e) loss of opportunity; (f) loss of anticipated savings; (g) loss or waste of management or other staff time; (h) indirect, special or consequential loss; (i) loss of any software or data; or (j) loss of use of hardware, software or data, arising under or in connection with this Agreement, whether or not such loss was foreseeable or if Everlink was advised of its possibility.
- 10.3 Subject to clause 10.1, and in addition to clause 10.2, Everlink shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any loss, damage, expense or liability incurred or sustained as a result of:
- (a) the use of any API and/or Service Data except for the Permitted Purpose;
 - (b) any defect arising in any API and/or Service Data as a result of misuse, wilful damage, negligence on the part of anyone other than Everlink, abnormal operating conditions or any failure by you to follow any instructions of Everlink as to use;
 - (c) any Developer Data; or
 - (d) the continued use of a version or release of any API and/or Service Data after Everlink has made an alternative version or release of such API and/or Service Data available to you.
- 10.4 Subject to clauses 10.1, 10.2 and 10.3, Everlink's total liability arising out of or relating to this Agreement or its subject matter and to anything which it has done or not done in connection with the same (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall be limited, in aggregate for all claims arising, to the greater of £500 (five hundred pounds) and the total fees paid and payable by you during the twelve (12) months immediately preceding the claim.

11. Confidentiality

11.1 Subject to clause 11.2, each party shall:

- (a) keep confidential all Confidential Information of the other party which it receives in connection with this agreement;
- (b) apply to it no lesser security measures and degree of care than those which it takes in protecting its own Confidential Information and in any event no less than that which a reasonable person or business would take in protecting its own confidential information;
- (c) only use such Confidential Information as strictly necessary for the performance of, or exercise of its rights under, this Agreement;
- (d) not disclose such Confidential Information to any third party (other than its professional advisers, officers, employees, agents, contractors and sub-contractors on a 'need to know' basis as strictly required for the purposes of this Agreement and subject to each such person being bound by an obligation of confidentiality equivalent to this clause 11); and
- (e) promptly, upon request and, in any event, upon termination of this agreement (for whatever reason), return to the other party all materials (in whatever form) incorporating, embodying or recording any such Confidential Information in its possession or control and, if requested by the other party, certify in writing that it has done so.

11.2 Either party may disclose the other's Confidential Information to the extent required by law or by any court, tribunal, regulator or other authority with competent jurisdiction to order its disclosure (but only to the extent of such requirement).

12. Term and termination

12.1 This Agreement shall commence on the Effective Date and will remain in effect until terminated pursuant to this clause 12 (the "**Term**").

12.2 Unless otherwise agreed in writing between the parties, either party may terminate this Agreement on 30 days' written notice at that Party's convenience for no reason.

12.3 Everlink may terminate this Agreement with immediate effect if you violate any provision of this Agreement (including any failure to comply with the payment provisions in clause 5). Where Everlink is entitled to terminate this Agreement, it may instead at its option and without prejudice to its right to subsequently terminate this Agreement, suspend your access to the API by disabling the API Key or otherwise. Any termination of this Agreement shall also terminate the licences granted to you hereunder. This does not impact any other rights of suspension that Everlink may have under this Agreement.

13. Consequences of termination

13.1 Upon termination of this Agreement for any reason:

- (a) you, any Developer Users and/or any End Users shall immediately cease to access, and discontinue all use of, the API, API Key and any Service Data;

- (b) you shall pay to Everlink all of Everlink's unpaid invoices for any applicable fees, and where no invoice has been submitted for services supplied, Everlink may submit an invoice which will be payable on receipt; and
- (c) you shall either return to Everlink, or destroy and remove from all computers, hard drives, networks, and other storage media, all copies of any materials licensed under this Agreement;

(as applicable) and you shall, on request, certify to Everlink that such actions have occurred.

13.2 The termination of this Agreement for any reason will not affect:

- (a) any accrued rights or liabilities which either party may have by the time termination takes effect; or
- (b) the coming into force or the continuation in force of any of its provisions that expressly or by implication are intended to come into force or continue in force on or after the termination.

14. General

14.1 You may not sub-license or assign, sub-contract or delegate any or all of your rights or obligations under this Agreement without the prior written consent of Everlink.

14.2 Unless the parties expressly agree otherwise in writing, if a party:

- (a) fails to exercise or delays exercising or only exercises partially any right or remedy provided under this Agreement or by law; or
- (b) agrees not to exercise or to delay exercising any right or remedy provided under this Agreement or by law;

then that party shall not be deemed to have waived and shall not be precluded or restricted from further exercising that or any other right or remedy.

14.3 If any provision of this Agreement is held for any reason to be ineffective or unenforceable, this shall not affect the validity or enforceability of any other provision of this agreement or this Agreement as a whole. If any provision of this Agreement is so found to be ineffective or unenforceable but would be effective or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it effective and enforceable.

14.4 Nothing in this Agreement shall or is intended to create a partnership or joint venture between the parties, constitute one party as agent of the other or give either party authority to make or enter into commitments, assume liabilities or pledge credit on behalf of the other party. Neither party may act as if it were, or represent (expressly or by implying it) that it is, an agent of the other or has such authority.

14.5 A person who is not a party to this Agreement shall not have any rights under or in connection with it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14.6 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.

- 14.7 This Agreement sets out all of the terms that have been agreed between the parties in relation to the subjects covered by it and supersedes all previous agreements between the parties relating to such subjects. Provided always that nothing in this clause 14.7 will operate to limit or exclude any liability for fraud or fraudulent misrepresentation, no other representations or terms shall apply or form part of this Agreement and each party acknowledges that it has not been influenced to enter this Agreement by, and shall have no rights or remedies (other than for breach of contract) in respect of, anything the other party has said or done or committed to do, except as expressly recorded in this Agreement.
- 14.8 This Agreement is governed by English law. Both parties submit to the exclusive jurisdiction of the English courts in relation to any dispute arising out of or in connection with this Agreement or its subject matter, but Everlink is also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce its Intellectual Property Rights.

SCHEDULE 1

End User Licence Agreement

Everlink API and Service Data

1. The Developer is the licensor of the Application and Service Data and Everlink is not a party to the Application Terms of Service.
2. The End User must not modify, reverse engineer, decompile or disassemble the Application and Service Data in whole or in part, or create any derivative works from or sub-license any rights in the Application and Service Data, unless otherwise expressly authorised in writing by Licensor.
3. The rights granted to the End User to use the Application under these Application Terms of Service do not convey any additional rights in the Application, Service Data or in any Intellectual Property Rights associated therewith. Subject only to limited rights to access and use the Application and Service Data as expressly stated herein, all rights, title and interest in and to the Application and Service Data and all hardware, software and other components of or used to provide the Application, including all related Intellectual Property Rights, will remain with and belong exclusively to Everlink.
4. Everlink shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to incorporate into the Application or otherwise use any suggestions, enhancement requests, recommendations or other feedback it receives from any End Users.
5. The End User grants Everlink, free of charge, a perpetual, royalty-free, worldwide, non-exclusive licence to host, store, reproduce, adapt, modify, use, translate, extract data from, perform, display and distribute the Developer Data to such extent as is necessary to enable Everlink:
 - (a) to provide the API and Service Data;
 - (b) to perform its obligations under this Agreement; and
 - (c) to monitor and improve the functionality of the API and the Everlink Technology through the analysis of the Developer Data in an aggregated form and to use the results of that analysis in marketing, promotion and reporting.
6. End Users must not:
 - (a) except as expressly permitted by these Application Terms of Service, permit any third party to access or use the Service Data and/or Everlink System or use the same on behalf of any third party (which includes operating any form of facility on behalf of any third party or operating a software bureau or similar service);
 - (b) copy, translate, modify, adapt or create derivative works from the Everlink System;
 - (c) attempt to or reverse engineer, modify, decrypt, extract, disassemble or decompile or derive source code, underlying ideas, algorithms, structure or organisational form from the Everlink System (except strictly to the extent that you are permitted to do so under applicable law), including in order to:
 - (i) build a competitive product or service;

- (ii) build a product using similar ideas, features or functions as the Everlink System; or
- (iii) copy any ideas, features or functions of the Everlink System;
- (d) develop Applications to substantially replicate products or services offered by Everlink, including functions or clients on platforms (such as iOS or Android) where Everlink offers its own client or function, provided that each party agrees that the other party may develop and publish applications that are similar to or otherwise compete with such party's applications. Applications may not use or access the Everlink System in order to monitor the availability, performance, or functionality of any of the Everlink System or for any similar benchmarking purposes;
- (e) attempt to gain unauthorised access to or interfere with the proper working of the Service Data and/or Everlink System and, in particular, must not attempt to circumvent security, licence control or other protection mechanisms, or tamper with, hack into or otherwise disrupt the API and/or Everlink System or any associated website, computer system, server, router or any other internet-connected device;
- (f) engage in any fraudulent activity or further any fraudulent purpose;
- (g) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the API and/or Everlink System; and/or
- (h) use the Service Data in any manner that does or could potentially undermine the security of the API, Service Data or Everlink System or any other data or information stored or transmitted using the API and/or Everlink System.