



This section is mandatory and requires physical signatures. Failure to complete this section will result in delays in implementation.

### Company Details

Company Name:

Trading As:

Company Reg Number:                 VAT Number:

Physical Address:

Postal Code:

☐ I/We warrant and confirm that the annual turnover and or net asset value of the Client exceeds the sum of R2 million (two million rand) as defined and calculated in terms of Government Gazette NO. 34181 of 1 April 2011.

### Please note:

- The company nominates this address for delivery of all notices and processes arising from here onward in connection with any claim for any sum due to the supplier or any ceded claim.
- The company will require a certified company registration document as well as a statement of location.

Email Address:

Postal Address:

Postal Code:

Effective Date:   /   /

Contract Term: 12 Months

### Billing / Invoice Details

#### Primary Contact

Title:  First Name:

Surname:

Mobile:                 Landline:

Email Address:

#### Alternative Contact

Title:  First Name:

Surname:

Mobile:                 Landline:

Email Address:

\* If the company has a Purchase Order, please submit it with the completed document.

\* The billing persons captured here are duly authorised to purchase additional PAYG credits, upgrade, downgrade, or cancel the account.

### Everlytic Banking Details

VAT Number	Registration Number	Bank	Account Name	Account Number	Branch	Branch Number	Swift Address
4300211259	2010/003671/07	First National Bank	Everlytic Pty Ltd	62446637623	Randburg	25-06-55	FIRNZAJJ



### Tenants & Users

Tenant is the main division in your organisation. Users are the actual users who will be logging in and using the system.

**Tenant** (The information provided under the tenant below will be used in your CAN-SPAM email footer.)

Name

Email

Tel

#### User 1

Name  ☐ Regular User ☐ Admin User

Surname

Email

Tel

#### User 2 (Optional)

Name  ☐ Regular User ☐ Admin User

Surname

Email

Tel

#### User 3 (Optional)

Name  ☐ Regular User ☐ Admin User

Surname

Email

Tel

**Note:** To add more tenants and users after initial setup, please contact [support@everlytic.com](mailto:support@everlytic.com).

### Your Company Industry

- |  |   |   |  |
|--|---|---|--|
| <input type="radio"/> Agencies & Marketing           | <input type="radio"/> Education and Training        | <input type="radio"/> Lifestyle, Arts & Entertainment | <input type="radio"/> Publishing & Media   |
| <input type="radio"/> Agriculture & Environmental    | <input type="radio"/> Financial Institutions        | <input type="radio"/> Logistic Services               | <input type="radio"/> Retail & Wholesale   |
| <input type="radio"/> Automotive                     | <input type="radio"/> Government Organisations      | <input type="radio"/> Medical & Healthcare            | <input type="radio"/> Technology & Science |
| <input type="radio"/> Business & Consulting Services | <input type="radio"/> Hospitality, Travel & Tourism | <input type="radio"/> NGOs                            |  |
| <input type="radio"/> E-commerce                     | <input type="radio"/> Industry, Trade & Manufacture | <input type="radio"/> Property & Real Estate          |  |

**Please note:** Setup will be processed in English during the Central African Time Zone (UTC+02:00). When submitting this document, please attach a high-res company logo (minimum 150 pixels or 300dpi) in JPG, PNG or PDF format.

Client gives their consent and grants a licence to use its name, logos and trademarks for marketing purposes on the terms recorded below: ☐ Yes ☐ No

With effect from the date of signature hereof, the Client hereby grants to Everlytic a non-exclusive, limited, non-transferable, royalty-free license to use, reproduce, distribute and publicly display the Client's name, logos and trademarks on Everlytic's websites and marketing materials, solely for the purpose of identifying that the Client is or has been a client of Everlytic (the "Licence"). By giving written notice to Everlytic at [legalnotifications@everlytic.com](mailto:legalnotifications@everlytic.com), the Client shall be entitled, at any time and in its sole discretion, to:

- revoke the Licence;
- modify the Licence by adding or removing those names, logos and/or trademarks which fall under the Licence; and
- require Everlytic to update or replace its name, logo and/or trademarks with new ones as used by the Client from time to time.





### 1. Standard Maintenance

- 1.1 Everlytic utilizes servers maintained by a Third Party to provide its Services. This Third Party is responsible for the maintenance and support of their infrastructure;
- 1.2 Everlytic endeavors to perform all scheduled maintenance outside of Business Hours;
- 1.3 Should any scheduled maintenance be forecasted to exceed one hour, notice will be given;
- 1.4 Everlytic will, where possible, give notice of any emergency maintenance that may be required;
- 1.5 In the unlikely event that the Service is unavailable, Everlytic will liaise directly with the relevant Third Party;
- 1.6 Everlytic will take commercially reasonable steps to minimise downtime; and
- 1.7 Everlytic's Services are dependent on internet connectivity. Everlytic will not be responsible if the Service is interrupted as a result of poor internet connectivity.

### 2. Help Desk & Support

- 2.1 Clients may contact Everlytic through the Help Desk or the call centre during Business Hours (weekdays from 09:00 to 17:00; excluding Saturdays, Sundays and public holidays.)
- 2.2 Each service request must be allocated a ticket number via email using the address [support@everlytic.com](mailto:support@everlytic.com); or via telephone on +27 11 447 6147.
- 2.3 Clients may also visit the online information centre at <http://help.everlytic.com> for self-help.

### 3. Support

- 3.1 In the event of a fault, the Client representative must email the details of the fault to [support@everlytic.com](mailto:support@everlytic.com). The Everlytic support team will then open a support ticket and respond to the Client in the time frames set out in the table below.
- 3.2 The interpretation of the fault and the assignment of the relevant severity level for the fault will be performed by the Everlytic support team and the Client will be notified thereof.

### 4. Support Escalation and Tiers

This is a breakdown of our Support Tier level:

Support Tier	Description
Tier 1 Support	All support incidents begin in Tier 1, where the initial support ticket is created, the issue is identified and clearly documented, and basic troubleshooting is initiated.
Tier 2 Support	All support incidents that cannot be resolved with Tier 1 Support are escalated to Tier 2, where more complex support on software issues can be provided by more experienced Engineers.
Tier 3 Support	Support incidents that cannot be resolved by Tier 2 Support are escalated to Tier 3, where support is provided by the most qualified and experienced Engineers who have the ability to collaborate with Third-Party Support Engineers to resolve the most complex issues.

### 5. Service Request Escalation Procedure

1. Support Request is received through the support email address or telephone number
2. An email request must be sent to receive a ticket
3. Support Ticket is created for email support queries
4. Issue is identified and the severity level assigned and documented by the Everlytic support team
5. Issue is qualified to determine if it can be resolved through Tier 1 Support

#### If issue can be resolved through Tier 1 Support:

1. Level 1 Resolution issue is worked to successful resolution
2. Quality Control – Issue is verified to be resolved to Client's satisfaction
3. Support Ticket is closed after complete problem resolution details have been updated

#### If issue cannot be resolved through Tier 1 Support:

1. Issue is escalated to Tier 2 Support
2. Issue is qualified to determine if it can be resolved by Tier 2 Support

#### If issue can be resolved through Tier 2 Support:

1. Level 2 Resolution issue is worked to successful resolution
2. Quality Control – Issue is verified to be resolved to Client's satisfaction
3. Support Ticket is closed after complete problem resolution details have been updated

#### If issue cannot be resolved through Tier 2 Support:

1. Issue is escalated to Tier 3 Support
2. Issue is qualified to determine if it can be resolved through Tier 3 Support



### If issue can be resolved through Tier 3 Support:

1. Level 3 Resolution issue is worked to successful resolution
2. Quality Control – Issue is verified to be resolved to Client's satisfaction
3. Support Ticket is closed after complete problem resolution details have been updated

### 6. Service Credits

- 6.1 Everlytic will repair a fault using all commercially reasonable endeavours.
- 6.2 Everlytic will, in its sole discretion, decide whether a fault can be resolved by resending, or alternatively, by crediting the Client's account with a service credit.
- 6.3 All service credits not utilised in the month in which they are awarded will carry over to the next month. If the credits are still not utilised in the carry-over month, the credits will fall away.

### 7. Key Contacts and Escalation Procedure

In the event that the Parties need to escalate any issue regarding the Services, the matter can be escalated to the relevant contacts as set out in the table below. If no response is received from the 1st level contact within six (6) business hours, the matter can be escalated to the next level.

Level	Name	Contact Details
2nd	Nazeerah Khan	Email: <a href="mailto:nazeerah@everlytic.com">nazeerah@everlytic.com</a> Tel: +27 11 447 6147
3rd	Wilene van Greunen	Email: <a href="mailto:wilene@everlytic.com">wilene@everlytic.com</a> Tel: +27 11 447 6147

### 8. Severity Levels and Response Times

The following severity levels define the response to faults logged during Business Hours (09:00 to 17:00):

Severity Levels	Response Time (MTR)	Repair Time (MTTR)	Escalation Time
<b>Severity Level 1 (Serious):</b>  This level of severity exists when the Service is inoperative and the customer's inability to use the Service has a critical effect on customer business operations. No workaround is available.  In addition, any condition that may critically impact data integrity exposure is also considered a Severity 1 problem	Business Hours	2 - 12 Business Hours	Business Hours
<b>Severity Level 2 (Medium):</b>  This level of severity exists when the Service is partially inoperative, however is usable but operating in a degraded state. The inoperative portion of the Service significantly impacts the client's operation; however has a less critical effect than a Severity Level 1.  A workaround may be available.  Possibility when IP address has been blocked and must be reconfigured.	Business Hours	4 - 48 Business Hours	Business Hours
<b>Severity Level 3 (Minimal):</b>  This level of severity exists when the Client either by means of circumvention, or with limited functionality deems the Software usable.  The condition is not critical to overall Client operations, and does not severely restrict such operations. Possible delivery issue to select recipient only.	Business Hours	10 - 48 Business Hours	Business Hours



## 1. INTERPRETATION

1.1 In this Agreement, the following words and expressions bear the meanings assigned to them below:

"the / this Agreement"	the Agreement set out in this document together with all appendices thereto.
"Acceptance Date"	means the date on which the Client accepts the terms of the Agreement, as contemplated in clause 2.4.
"Account/s"	means with reference to the Software and the Services, the unique profile of the Client relayed in terms of the Software, which identifies and describes the Client's use of the Services, its preferences, and settings and which includes the Client Data.
"Aggregated Client Data"	means the statistical data compiled by Everlytic during the course of this Agreement.
"Business Hours"	means the hours of 09:00 to 17:00 Monday to Friday, excluding public holidays and weekends.
"Bulk Messages"	means that virtually the same content / email and / or SMS-message is sent to many people.
"Client/s"	means the company name, registration number and representative person as stipulated under the Agreement.
"Client Data"	means the Client's data submitted to Everlytic and as hosted on the server, including text and multimedia, copies, templates, images, video files, audio files, Contact and Subscriber information, Mailing Lists and other information supplied by the Client to Everlytic in any other format which the Client's data may be hosted in, which data may comprise of Personal Information and/or Special Personal Information.
"Contacts / Subscribers"	means the Client's communication recipients.
"Custom SSL"	means SSL certificates customised to the Client's organisation. SSL certificates are mechanisms to encrypt web traffic between the end user and Everlytic servers. All Everlytic instances come with a standard Everlytic SSL certificate but these can be customised to your organisation.
"Data Protection Legislation"	means the legislation relating to data protection in the Republic of South Africa from time to time, including but not limited to the Electronic Communication and Transactions Act 25 of 2002 ("ECTA"), the Consumer Protection Act 68 of 2008 ("CPA"), and the Protection of Personal Information Act, 4 of 2013 ("POPIA").
"Data Subject"	means the Client's customers, staff, directors, agents, affiliates shareholders (who are natural persons) and any natural persons or any other person/s to whom Personal Information relates.
"Digital Signature"	means an electronic signature; a. that uses a certificate based digital identification; b. is issued by an accredited certificate authority or trust service provider; c. is uniquely linked to the signatory; d. that binds the signature to the document with encryption; e. can be verified using public key infrastructure; and f. need not be an advanced electronic signature as defined in the Electronic Communications and Transactions Act No. 25 of 2002;
"Downtime"	means a period of time during which the Service and / or Software is not operational, whether due to malfunctioning or maintenance being carried out in respect of any information technology system or part thereof.
"Effective Date"	Means, regardless of the Acceptance Date, the date on which Everlytic commences rendering the Services, as stipulated in Section 1.
"Everlytic"	means Everlytic (Pty) Ltd, a private company duly incorporated in terms of the laws of the Republic of South Africa with registration number 2010/003671/07, and any of its affiliates, respective staff, successors, cessionaries, delegates and assigns.
"Fees"	means the fee charged by Everlytic as set out in the annexure of this Agreement, which may be a recurring fee or a once off fee, which will increase at least annually in accordance with the most recent Rate Card in January of each year.
"Intellectual Property"	means all copyright, trademarks, designs, patents, and the like recognised as a class of intellectual property in the Republic of South Africa.
"Licence/s"	means license granted by Everlytic to the Client for the duration of this Agreement.
"Mailing List"	means the list/s of email recipients compiled by the Client in relation to each instance of the Client's use of the Services.
"Parties"	means Everlytic and the Client or any of them as the context may indicate.
"Pay-as-You-Go (PAYG) Credits"	means Email or SMS credits available for purchase on a top-up basis in the event that monthly credits run out.
"Personal Information"	means all Personal Information for which the Client is the Responsible Party (where, for the purposes of this definition, "Personal Information" and "Responsible Party" have the meanings given to them by the POPIA) to which Everlytic has been given access or which is generated by or on behalf of the Client, including, inter alia- Race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language, and birth; Education, medical, financial, criminal or employment history; Names, identity number and / or any other personal identifier, including any number(s), that may uniquely identify a Data Subject, account or client number, password, pin code, customer or Data Subject code or number, numeric, alpha, or alpha-numeric or configuration of any nature, symbol, email address, domain name or IP address, physical address, cellular phone number, telephone number, or other particular assignment; Blood type, fingerprint, or any other biometric information; Personal opinions, views, or preferences; Correspondence that is implicitly or expressly of a personal, private, or confidential nature (or further correspondence that would reveal the contents of the original correspondence); and Corporate structure, composition and business operations (in circumstances where the Data Subject is a juristic person) irrespective of whether such information is in the public domain or not.
"POPIA"	means the Protection of Personal Information Act, 4 of 2013.
"Private Key Encryption"	means an encryption key that is dedicated exclusively to a single client. These are used for encrypting backups and data at rest.



"Private / Dedicated Servers"	means a server or virtual machine that is dedicated exclusively to the usage of a single client.
"Processing"	means any operation or activity or any set of operations, whether by automatic means or not, concerning Personal Information, including – the collection, receipt, recording, organisation, collation, storage, updating or modification, testing of, retrieval, alteration, consultation, or use; dissemination by means of transmission, distribution or making available in any other form, by electronic communications or other means; or merging, linking, blocking, degradation, erasure, or destruction;
"Quote"	means a cost estimate for the rendering of products and services.
"Regulator"	shall bear the meaning ascribed to this term in the POPIA.
"Send limits"	means the maximum number of emails that the Client may distribute each month for the duration of this Agreement as determined by the applicable Subscriber Limits.
"Services"	means the bulk email, text message, Voice Broadcasting and web push notification software services supplied by Everlytic to the Client in terms of this Agreement and incorporating limited licensed use of the Software by the Client as set out herein.
"Sent"	means, specifically when referring to a SMS text message, the act of the Client publishing a text message from the Everlytic Software platform, at which point it immediately becomes billable to the Client, irrespective of whether or not the text message is successfully delivered and/or read by the subscriber.
"SMS"	means a text message sent using the text-messaging service component of phone, web, or mobile communication systems, using standardised communications protocols that allow the exchange of short text messages between fixed line or mobile phone devices.
"Software / Everlytic Software"	means Everlytic software, which comprises of bulk email and SMS-message distribution web-hosted software developed by Everlytic and licensed by Everlytic to the Client to enable the provision of the Services to the Client.
"Spam"	means unsolicited bulk email and / or SMS-message distribution.
"Subscriber Limits"	means the maximum number of Subscribers and / or Contacts per Mailing List which the Client has elected / is entitled to distribute email correspondence to each month for the duration of this Agreement. For avoidance of doubt it is noted that each time that a Subscriber / Contact appears on a Mailing List such Subscriber / Contact will be counted as a Subscriber for purposes of determining the Subscriber Limit.
"Third Party"	means and third-party service provider who Everlytic may utilise the services of in order to provide the Services to the Client.
"Unsolicited"	means that the Recipient has not granted verifiable permission for the message to be sent to them.
"User/s"	means the Client's agreed allocated and registered number of users of the Software and the Services, the identities of whom shall be provided by the Client in writing to Everlytic on a regular basis.
"Voice Broadcasting"	means a recorded message that is delivered to Subscribers by way of a telephone call.

## 2. SCOPE AND VALIDITY OF THE AGREEMENT

- 2.1 The Client requires and Everlytic shall provide the Software and the Services in accordance with the terms and conditions contained in this Agreement.
- 2.2 This Agreement is entered into by the Parties to regulate:
  - 2.2.1 The Services to be rendered and Software to be supplied by Everlytic to the Client;
  - 2.2.2 The terms and conditions of the Licence granted to the Client in respect of the Software; and
  - 2.2.3 The obligations of Everlytic and the Client respectively in relation to the above.
- 2.3 This Agreement is the whole agreement between the Parties. No undertaking, representation, term or condition not recorded herein shall be binding on either of the Parties.
- 2.4 This Agreement constitutes an offer to the Client by Everlytic, which offer shall become binding upon the Parties upon acceptance hereof by the Client whether such is acceptance is evidenced by the signing this Agreement in handwriting or by Digital Signature by the Client, or through the commencement of use of the Services by the Client.

## 3. DURATION AND TERMINATION

- 3.1 This Agreement shall commence on the Effective Date, regardless of the Acceptance Date, and will continue for the term as set out in Section 1 ("the Contract Term"), which term shall automatically renew for a further 12-month period ("Renewal Term") at the then-current rates, unless terminated before then in accordance with these terms.
- 3.2 If there are any changes to this Agreement, Everlytic will communicate such changes on 30 (thirty) days' notice. The Client may then elect to:
  - 3.2.1 renew the Agreement in accordance with the Renewal Term; alternatively;
  - 3.2.2 terminate the Agreement without incurring any penalties provided the full Contract Term was concluded.
- 3.3 The Client shall have 60 (sixty) days after the automatic renewal date to issue Everlytic with its notice to terminate the Agreement for convenience without incurring any penalty fees. A 30 (thirty) days' notice period will apply in this case.
- 3.4 This Agreement may be terminated by either Party on 30 (thirty) days written notice in the event that the other Party:
  - 3.4.1 commits an act or omission that, if it was a natural person, would be an act of insolvency in terms of the Insolvency Act 24 of 1936, as amended;
  - 3.4.2 institutes business rescue proceedings;
  - 3.4.3 ceases operating its business as a going concern; or
  - 3.4.4 is provisionally or finally liquidated.
- 3.5 On termination of this Agreement:
  - 3.5.1 Everlytic shall de-activate the Client's Account and other rights in relation to the Software and the Services; and
  - 3.5.2 Once any outstanding amounts have been paid in full to Everlytic, the Client shall have access to the Client Data for a period of 21 (twenty-one) days from the date of termination for purposes of retrieval or transfer thereof, where after Everlytic shall delete the Client





Data and shall only retain Aggregated Client Data to be used for statistical purposes.

- 3.6 Should the Client request to terminate this Agreement prior to the conclusion of the Contract Term, and provided Everlytic agrees to such request, the Client shall become liable to pay all outstanding monies owed to Everlytic.
- 3.7 In addition, the Client will be liable to pay the following early termination fees:
  - 3.7.1 20% (twenty percent) of the total value of this Agreement as if the full Contract Term were completed.
  - 3.7.2 To avoid doubt and as example only: should Everlytic agree to the early termination of an agreement six months prior to the conclusion of a 12 (twelve)-month Contract Term, the Client would be liable to pay Everlytic 20% (twenty percent) of the total sum of the Contract Term's full 12 (twelve) monthly payments (and NOT 6 (six)).
- 3.8 Termination of this Agreement will not terminate any provisions that are, by their nature, intended to survive termination.
- 3.9 By signing this Agreement, the Client acknowledges that these early termination fees are reasonable.

#### 4. SERVICES

- 4.1 On or before the Effective Date, Everlytic shall activate the Client's Account and shall assign the Client a unique username and password to enable the Client's secure access to the relevant Software and Services;
- 4.2 The Client may purchase bulk Pay-as-You-Go Credits at any time on request to Everlytic, at the current rate or as set out in the Fees Annexure. This service is offered in addition to monthly email packages only and will be activated once payment is affected and received by Everlytic.

#### 5. CLIENT OBLIGATIONS

- 5.1 The Client:
  - 5.1.1 specifically undertakes to ensure that its username and password are only disclosed to authorised users;
  - 5.1.2 shall ensure that it and the users keep the aforesaid username and password confidential;
  - 5.1.3 agrees to immediately notify Everlytic via email (to be sent to support@everlytic.com) should the confidentiality of its username and / or password be compromised, in which event Everlytic shall reset the Client's username and / or password accordingly;
  - 5.1.4 understands and accepts that it shall be held responsible and / or liable for all activities conducted by it in relation to its Account;
  - 5.1.5 shall notify Everlytic in writing on or before the Effective Date of the Send Limit and / or Subscriber Limit elected by it in order for Everlytic to ascertain which pricing band, as detailed in the Fees annexure, the Client shall fall into for purposes of calculating the Fees; and
  - 5.1.6 accepts and agrees that the following use (without limitation) shall constitute unauthorised use of the Software and / or Services:
    - 5.1.6.1 Any use which is unlawful, defamatory, objectionable, offensive, harassing, abusive, threatening, harmful, vulgar, obscene, amounts to unlawful unsolicited commercial communications, and / or infringes the rights of third parties;
    - 5.1.6.2 Any use which comprises of or advances unlawful collection and processing of personal information including, but not limited to, email addresses, without the Subscriber / Contact's consent, as the case may be;
    - 5.1.6.3 Engaging in prohibited data privacy practices, which shall include but not be limited to the use of purchased databases and / or the use of databases whereby the Client cannot readily prove that the Subscriber / Contact's consent, as the case may be, to receive email communications was obtained by the Client;
    - 5.1.6.4 Creating a false identity and / or attempting to mislead the public as to the identity of the sender and / or origin of the communication;
    - 5.1.6.5 Transmission of any data which may infringe on the intellectual property rights of third parties;
    - 5.1.6.6 Any attempts at reverse engineering, gaining unauthorized access to the Everlytic Software, or attempting to discover the underlying source code or structure of the Everlytic Software;
    - 5.1.6.7 Any attempts at framing, distribution, or unauthorised resale;
    - 5.1.6.8 Transmission of any data which contains viruses, a Trojan horse, worms, and / or other malicious programs;
    - 5.1.6.9 Any attempts, successful or otherwise, to gain unauthorised access to the Software, Everlytic systems, other Everlytic accounts, computer systems, or networks connected to the Service, through password mining or any other means; and
    - 5.1.6.10 Engaging in any other activity that could subject Everlytic to criminal and / or civil liability; and
  - 5.1.7 shall procure and / or provide all the necessary equipment, software, hardware, communications equipment and / or connectivity requirements to enable the Client's Account, access to, and use of the Software and Services.
- 5.2 Everlytic does not warrant the compatibility of the Software and Services with the Client's system and the Client agrees that it is solely liable for ensuring compatibility, as well as the required ISP and / or telecommunications costs, needed to access and / or utilise the Software and Services.
- 5.3 The Client is solely responsible for the accuracy of the Client Data including the accuracy of the data migrated onto the Account. The Client shall ensure the correct formatting and / or validation in respect of the Mailing Lists. The Client accepts and agrees that in instances when the format of the Mailing List and / or content must be a text file, CSV, Excel or XLS file, any other file, (including but not limited to: .DOC, .EXE) may result in errors which may cause delays and / or additional charges.
- 5.4 The Client will notify Everlytic immediately of the termination of employment of any User or of any other requirements for the suspension of any particular User's access to the Software:
  - 5.4.1 Everlytic shall then disable such User's access to the Software upon receipt of such notification and will provide the Client with written confirmation that the specified User's access has been terminated or suspended;
  - 5.4.2 In the event of a User misusing or abusing the Software and / or Services the Client acknowledges that Everlytic has the right, on written notice, and in its sole and unilateral discretion, to disable the access of any User that Everlytic determines has abused the Software in any way.
- 5.5 The Client shall ensure that:
  - 5.5.1 All unsubscribe and opt-out requests received are strictly adhered to and implemented. A Subscriber / Contact who has unsubscribed or opted-out, as the case may be, shall not receive any further email or SMS communications regardless of whether or not the Client has unmapped / deleted the applicable Subscriber / Contact / list;
  - 5.5.2 It unmaps / deletes any Subscriber / Contact from the Mailing List/s in the event that it requires such Subscriber / Contact to be entirely removed from the Mailing List and in which event the Subscriber / Contact so removed shall no longer form part of the Subscriber Limit.
- 5.6 The Parties agree that unless the Client has attended to unmap / delete a Subscriber / Contact from a Mailing List:
  - 5.6.1 Such Subscriber / Contact shall still form part of the Subscriber Limit and will be charged for accordingly regardless of whether the Subscriber / Contact has unsubscribed from the Mailing List/s; and
  - 5.6.2 The Client shall still have access to archive reports and statistics in relation to previous email communications sent to the abovementioned Subscriber / Contact, as well as to the record that such Subscriber / Contact unsubscribed for a reasonable period.



### 6. EVERLYTIC'S OBLIGATIONS

- 6.1 For the duration of this Agreement Everlytic shall:
  - 6.1.1 Maintain the Software in a normal operating condition;
  - 6.1.2 Provide maintenance services as agreed;
  - 6.1.3 update and test the Software as reasonably required;
  - 6.1.4 backup file servers and Client's data;
  - 6.1.5 safely store Client Data;
  - 6.1.6 ensure that the necessary degree of technical skill and care is applied that could be expected from a reasonable service provider in the position of Everlytic; and
  - 6.1.7 ensure that all of its employees and representatives performing the Services are suitably trained and professionally managed by it.
- 6.2 If the Client has subscribed for the Private Security option, Everlytic shall:
  - 6.2.1 provide training at the Clients request, via appropriate means being electronic or face to face, to Professional and Advanced Clients, once per quarter in any 12 (twelve) month cycle;
  - 6.2.2 store and provide a Private Key Encryption of data; and
  - 6.2.3 provide a fully managed private database server dedicated to "the Client".

### 7. SOFTWARE LICENCE

- 7.1 The use of the Software is provided to the Client under the terms of the Licence as recorded hereunder and in terms of the further provisions of this Agreement.
- 7.2 The Client accepts and agrees to be bound by the terms of this Licence.
- 7.3 Everlytic hereby grants the Client a non-exclusive, non-transferable, non-sub-licensable, limited, revocable, royalty free, worldwide licence to use the Software in accordance with the terms of this Agreement. Everlytic shall retain all title, copyright, and other intellectual property rights in the Software. For avoidance of doubt, the Parties agree that the Software is being licensed, not sold, to the Client;
- 7.4 The Client consents and agrees to the provisions of the Privacy Policy which Everlytic adheres to when collecting and handling Personal Information submitted to it by the Client (which is contained on Everlytic's website), the terms of which may be amended by Everlytic from time to time and which are incorporated herein by reference;
- 7.5 The Client agrees that the input of data and the accuracy and adequacy thereof, is under the exclusive control of the Client in its capacity as the Responsible Party. Any use by the Client of the data output or any reliance thereon, is the sole responsibility of the Client;
- 7.6 Everlytic reserves all rights in the Software not explicitly granted to the Client herein.

### 8. INVOICING AND PAYMENT

- 8.1 Everlytic shall render the Services in accordance with the rates set out in the Fees annexure. In this regard, it is specifically agreed that:
  - 8.1.1 Any amounts set out are exclusive of VAT;
  - 8.1.2 The amounts set in the Quote and the Fees annexure are fixed for the Contract Term;
  - 8.1.3 The payment of the Fees shall be due irrespective of whether or not the Client utilises the Service subscribed for, save for Pre-paid credits which may carry over until utilized (SMS has an expiration of twelve months);
  - 8.1.4 The Client is invoiced for all SMSs Sent;
  - 8.1.5 Any accounts outstanding over 60 (sixty) days will be charged interest at the Prime Rate +5% (five percent);
  - 8.1.6 If the Client requires a decrease in its Subscriber and / or Sender Limit, Everlytic reserves the exclusive right to approve such at its sole discretion. If approved, Everlytic will require 1 (one) calendar month written notice to this effect.
  - 8.1.7 If the Client requires an increase in its Subscriber and / or Sender Limit, it must provide written notice to Everlytic, alternatively purchase PAYG credits. If notice is not received and the Client exceeds its Subscriber and / or Sender Limit without purchasing PAYG Credits, access will be restricted until such notice is received, processed, and an additional fee being charged; and
  - 8.1.8 Only the event of a Software and / or Service malfunction occasioned solely by the gross negligence of Everlytic shall be cause for Everlytic to, in its sole discretion, allow a credit or refund.
- 8.2 Everlytic shall send invoices monthly, in advance, for Subscriber packages. Additional PAYG packages will be allocated immediately on the receipt of payment;
- 8.3 The Client shall attend to payment of the Fees within 30 (thirty) days of the date of invoice without deduction or set off, via debit order or electronic funds transfer ("EFT");
- 8.4 Everlytic utilizes First National Bank as its payment facility supplier for the processing of any debit orders and thus places reliance on the security protocols affected by First National Bank;
- 8.5 Everlytic reserves the right in its sole discretion, without prejudice to any of its other rights as contained in this Agreement, to suspend the Services and the Client's access to the Software in the event that the Client fails to effect timely payment of the Fees or any portion thereof and until such time as payment is received in full by Everlytic. In that event, Everlytic shall be entitled in its sole discretion to charge a reasonable reactivation fee.

### 9. PERSONAL INFORMATION AND PRIVACY

#### 9.1 OBLIGATIONS OF EVERLYTIC WITH RESPECT TO PERSONAL INFORMATION

Everlytic shall -

- 9.1.1 only Process Personal Information in accordance with applicable laws, in terms of this Agreement and in accordance with any instructions, requirements or specific directions of the Client;
- 9.1.2 not disclose or otherwise make available the Personal Information to any third party, other than is strictly necessary in order for Everlytic to carry out its obligations pursuant to this Agreement, unless the Client has provided its prior written permission to do so to Everlytic, and if such consent is granted by the Client, Everlytic shall submit a copy of a written undertaking, to the satisfaction of the Client, which Everlytic has entered into with a third party for the protection of Personal Information of the Data Subject, which has been disclosed to such third party by Everlytic;
- 9.1.3 ensure that all Staff and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information on substantially the same terms and conditions as set forth herein;
- 9.1.4 take appropriate, reasonable, technical, and organisational measures to ensure that the integrity of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against unauthorised or unlawful processing,





accidental loss, destruction or damage, alteration, disclosure, or access by having regard to:

- 9.1.4.1 any applicable requirement in law, stipulated in appropriate industry rules or in codes of conduct or stipulated by a professional body governing Everlytic;
- 9.1.4.2 generally accepted information security practices and procedures which apply to Everlytic's business and to the Client, as may be appropriate to discharge its obligations in terms of this Agreement; and
- 9.1.4.3 appropriate, reasonable, technical, and organisational measures to ensure that the Personal Information in its possession or under its control remains available to the Client as and when it may be required.

9.1.5 Everlytic reserves the right to make general credit reference enquiries about the Client and to check the correctness of the information that has been supplied.

9.1.6 Everlytic shall also be entitled to furnish any information relating to the Client's account and compliance with these conditions to any registered credit bureau.

9.1.7 The Client warrants and represents that all information supplied, is accurate, correct and complete

9.1.8 Everlytic will use the Client's Data strictly in accordance with the relevant Data Protection Legislation.

### 9.2 NOTIFICATION OF PERSONAL INFORMATION SECURITY BREACH

Everlytic shall:

- 9.2.1 notify the Client as soon as reasonably possible as it becomes aware of or has reasonable grounds to believe that the Personal Information of a Data Subject has been accessed or acquired by an unauthorised person and take all appropriate steps to limit the compromise of Personal Information and to restore the integrity of the affected information systems as quickly as possible;
- 9.2.2 as soon as reasonably possible thereafter, Everlytic shall assist the Client to report all relevant facts relating to the compromise; and
- 9.2.3 provide the Client with details of the Personal Information affected by the compromise, including but not limited to, the identity of Data Subjects, the nature and extent of the compromise, and, where possible, details of the identity of the unauthorised persons who are known to or who may reasonably be suspected of, having accessed or acquired the Personal Information.

### 9.3 DISCLOSURE OR PROCESSING REQUIRED BY LAW, REGULATION OR COURT ORDER

In the event that Everlytic or any third party to which the Personal Information has been disclosed pursuant to this Agreement, is required by law, regulation or court order, to disclose or process any Personal Information, Everlytic will:

- 9.3.1 advise the Client thereof prior to disclosure or Processing, if possible. If it is not possible to advise the Client prior to disclosure or Processing, Everlytic shall advise the Client as soon as practicable after such disclosure or Processing;
- 9.3.2 take such steps to limit the extent of the disclosure or Processing insofar as it reasonably, practically and legally can;
- 9.3.3 afford the Client a reasonable opportunity to intervene in the proceedings and
- 9.3.4 comply with the Client's requests as to the manner and terms of any such disclosure or Processing.

### 9.4 CROSS BORDER TRANSFER OF PERSONAL INFORMATION

9.4.1 The Client specifically consents to the trans-border flow of the Personal Information of the Data Subjects. The purpose of which includes but is not limited to data hosting and storage and is necessary in the performance of the Agreement and further is in the interests of the Data Subject.

9.4.2 Everlytic agrees to comply strictly with the Client's express instructions for cross-border transfers of any Personal Information, alternatively as may be provided in this Agreement.

9.4.3 Everlytic agrees to enter into any necessary data transfer agreements for its transfer of Personal Information outside of the Republic of South Africa, as may be required.

### 9.5 PERSONAL INFORMATION PROTECTION

9.5.1 The Client warrants that it will take all reasonably practicable steps, as required by law, to ensure that all Personal Information of its Subscribers and Contacts, submitted by it to Everlytic, are complete, accurate, up to date, relevant, and not misleading in any way.

9.5.2 Each Party to this Agreement undertakes to use its reasonable endeavours to procure that any of its third parties comply with the Data Protection Legislation and all other applicable data-protection legislation and regulations in connection with the performance of its obligations and exercise of its rights under this Agreement.

9.5.3 Without prejudice to the generality of clause 9.5.2, with respect to any Processing under this Agreement, each Party to this Agreement shall (and shall procure that any of its third parties or further operators) take appropriate security, technical, and organisational measures against unauthorised or unlawful processing of Personal Information supplied to it by another Party to this Agreement and against accidental loss or destruction of, or damage to, that Personal Information in accordance with the Principle Seven (the "Seventh Principle") as set out in the POPIA.

9.5.4 Each Party to this Agreement undertakes:

- 9.5.4.1 to treat the Personal Information as confidential information;
- 9.5.4.2 not to use or knowingly permit any third party to use, or have access to, the Personal Information for any purpose other than as is expressly permitted by this Agreement;
- 9.5.4.3 that it shall not use Personal Information held by it pursuant to this Agreement for any purpose that is inconsistent with those purposes notified to the relevant Data Subject on or before the time of collection of that Personal Information;
- 9.5.4.4 to promptly inform the other Party of any actual or suspected unauthorised access, use, or other abuse of the Personal Information of which it or any of its data operators, agents, or contractors becomes aware; and
- 9.5.4.5 at its cost, to provide, at the other Party's request, all reasonable assistance to the requesting Party in relation to the preparation and presentation of the relevant information to the Regulator or as otherwise required by the applicable legislation for the purpose of prosecuting those persons responsible for the incident of unauthorised access, use, or abuse, and for any legal actions that the requesting Party may bring against those persons responsible for the unauthorised access, use, or abuse.

### 9.6 RETENTION AND DESTRUCTION

Everlytic shall render all the Services in accordance with this Agreement or instructions received from the Client, including retention and destruction of Personal Information. Should the Client fail to give instructions as to the return or destruction of Personal Information after the termination of this Agreement, Everlytic shall be obliged to destroy and/or de-identify the Personal Information after 30 (thirty) days.

## 10. SPAM POLICY

10.1 Everlytic does not allow the sending of Spam.

10.2 The data imported into the Client's system must at least comply with one of the following:

- 10.2.1 Contacts have opted-in from the Client's website;



- 10.2.2 Contacts have given the Client permission to send them email and / or SMS communication;
- 10.2.3 the Client can verify where it acquired the data (have proof of data source); and
- 10.2.4 Contacts are existing customers of the Client, alternatively, have transacted with the Client in the past 2 (two) years.
- 10.3 The Client may not import a Contact's information if;
  - 10.3.1 It was purchased, rented, or acquired from a third-party list of email addresses; or
  - 10.3.2 The Contact/s email addresses have been scraped or "copied and pasted" from websites.
- 10.4 If the Client is unsure of the integrity of the data, they must inform Everlytic before proceeding to communicate to these Contacts.

### 11. INTERCEPTION AND MONITORING

- 11.1 If Everlytic receives a complaint, it is required by law to investigate it; and
- 11.2 In the course of certain support services, Everlytic may be required to login to the Client's Account, which it will do with the Client's consent.
- 11.3 Everlytic may then, if necessary and in accordance with prevailing legislation, be required to intercept, block, filter, read, delete, disclose, and / or use the Client Data and communications sent and / or received to / by the Client's account. The Client agrees and consents to this and accepts that this will satisfy the 'writing' requirement specified in the Regulation of Interception of Communications Act 70 of 2002 ("RICA").

### 12. INTELLECTUAL PROPERTY

- 12.1 Intellectual property in and to the Software and the Services, including, as applicable, processes and methodologies, source codes, and other proprietary interests will be and shall remain vested in Everlytic for the duration of this Agreement and thereafter.
- 12.2 Everlytic retains the right, title, and interest to all and / or any design, patent, and / or copyright in relation to the Software and the Service whether registered or not. Same includes the name "Everlytic" and any other branding or intellectual property associated with the Services and / or the Software, regardless of whether or not same have been registered or patented. Such designs, patents, or copyrights shall not be limited to any particular area or country and Everlytic shall have the right to alter, modify, adapt, or change any design, process, or method of any patent and / or copyright in relation to the Software and the Service at its sole discretion.
- 12.3 The Client shall not copy, print, or publish any of Everlytic's methods, processes, or procedures relating to the Software and Service, nor shall the Client produce or attempt to produce any product that performs materially the same functions as the Software and Service.
- 12.4 It is specifically recorded that all Intellectual Property rights of any nature whatsoever whether capable of registration or not (and whether registered or not) in the Client's name, trademarks, products, logos, images, and all other matters relating to the Client shall remain the sole Property of the Client and Everlytic shall not acquire any rights in relation to such Intellectual Property.
- 12.5 Everlytic shall not sub-license any of the Intellectual Property rights of the Client to any third party without the prior written consent of the Client, which consent shall not be unreasonably withheld.

### 13. DISASTER RECOVERY

Incidents that cause major power / system outages and internet disconnections are of the highest priority, and Everlytic shall ensure that the Client's use of the Software, as well as the Client Data, is factored into Everlytic's overall Disaster Recovery Plan. A copy of the Client Data hosted by Everlytic shall be replicated to dedicated servers regularly.

### 14. INDEMNITIES

- 14.1 Everlytic agrees to indemnify, hold harmless, and to cooperate as fully as reasonably required in the defence of any claim against the Client, against any and all claims, liabilities, damages, costs and expenses arising from or relating to:
  - 14.1.1 Claims by third parties regarding the Intellectual Property contained in the Software or the Client's rights of use of the Software;
  - 14.1.2 Unlawful or grossly negligent actions of Everlytic in relation to this Agreement or the Software.
- 14.2 The Client agrees to indemnify, hold harmless and to co-operate fully, as is reasonably required, in the defence of any claim against Everlytic against any and all claims, liabilities, damages, costs and expenses arising from or relating to:
  - 14.2.1 the Client's non-compliance with:
    - 14.2.1.1 this Agreement;
    - 14.2.1.2 any relevant Data Protection Legislation, regardless of whether any such loss or damage occurred as a result of a force majeure event; and
  - 14.2.2 any content that was approved or deemed to have been approved by the Client and that was actually published by the Client via Everlytic, noting that Everlytic does not screen or edit the Client's content.

### 15. LIMITATION OF LIABILITY

- 15.1 Neither Party, nor its parents, subsidiaries, or affiliates will be liable to the other for any indirect, direct, punitive, special, incidental, or consequential damage in connection with, or arising out of, this Agreement (including loss of business, revenue, profits, use, data, or other economic advantage), however so arising and even if that Party has been advised of the possibility of such damage, save as expressly provided to the contrary in this Agreement.
- 15.2 Everlytic specifically disclaims all implied warranties of merchantability, fitness for a particular purpose, non-infringement, and accuracy. Everlytic does not warrant that the Product will be error free and operate without disruption. Everlytic makes no representations or warranties with respect to any Third-Party applications.
- 15.3 Everlytic's entire liability under this Agreement will be limited to the amount actually paid by the Client during the 12 (twelve) months prior to the liability arising.

### 16. ASSIGNMENT

Neither of the Parties may assign this Agreement or any of the rights and obligations under it without the prior written approval of the other Party, which approval shall not be unreasonably withheld.

### 17. VARIATION

Any variation of this Agreement requested by the Client shall be of no force and effect unless agreed to in writing and signed by both Parties to this Agreement.

### 18. BREACH

If either Party (the "Defaulting Party") breaches a term of this Agreement and fails to remedy that breach within 14 (fourteen) days of receipt of written



notice from any other Party (the "Aggrieved Party") calling for the breach to be remedied, then the Aggrieved Party shall be entitled, without prejudice to any other rights that it may have, whether under this Agreement or in law, to cancel this Agreement without notice or to claim immediate specific performance of all the Defaulting Party's obligations, whether or not due for performance, in either event, without prejudice to the Aggrieved Party's right to claim damages.

### 19. DISPUTE RESOLUTION

- 19.1 Any dispute arising in connection with this Agreement shall first be referred to the respective Chief Executive Officers of the Parties, who shall attempt to resolve the dispute within 14 (fourteen) days from the date on which the dispute was referred to them. Should the Chief Executive Officers or their nominees fail to resolve the dispute within the specified period, either of the Parties shall refer the matter to arbitration.
- 19.2 In the event of there being a dispute relating to or arising out of this Agreement, including regarding the scope, effect, validity, implementation, execution, interpretation, rectification, termination, or cancellation of this Agreement, has not been resolved in accordance with the above, then such dispute shall be finally resolved on the terms as provided for below:
- 19.2.1 The Parties agree and submit to the jurisdiction of the Magistrates' Court. Any costs incurred by Everlytic in the collection of any overdue accounts, legal costs, tracing fees, and the like shall be recovered from the Client.
- 19.2.2 Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to any appropriate Court for an interdict, urgent relief, or for judgment in relation to a debt or claim that is undisputed.

### 20. LEGISLATION

This Agreement shall be governed by and interpreted in accordance with all applicable South African law.

### 21. WARRANTY OF AUTHORITY

The Client will ensure that its representative who signs this Agreement on behalf of the Client is duly authorised to do so and in so doing binds the Client on the terms set out herein. The representative signing this Agreement on behalf of the Client shall be, at least, a director or a member of a formal management committee of the Client. For avoidance of doubt the Client will henceforth be prohibited from relying on the defence of lack of authority.

Name (in print):

Signed in my capacity as:

Place:

Date:   /   /      
D D M M Y Y Y Y

I am duly authorised by the company to sign this agreement on its behalf and verify that the above information is true, correct, and complete in all respects. I agree that all transactions concluded with the supplier will be subject to terms and conditions, which I acknowledge have been read and understood.

