

Estate Terms and Conditions

Everlasting Nominees Limited

(last updated 24 April 2023)

1. General

- 1.1 The terms and conditions set out in this document (**Estate Terms**), together with the other documents referred to in these Estate Terms, form a contract between Everlasting Nominees Limited (company number 8443461) (**Everlasting, we, our or us**), the person to whom Everlasting is providing the Estate Services (**Client, you, your**, which shall for the purposes of these Estate Terms include your successors and permitted assigns), your selected Digital Executor (who must, unless otherwise agreed by us, be a solicitor, financial advice provider, chartered accountant, professional fiduciary or other member of a regulated professional body) for the purposes of these Estate Terms (**Digital Executor**, which shall include any replacement appointed by the Client in accordance with clause 3.4) and any other party to the Letter of Engagement (as defined below).
- 1.2 Your use or continued use of the Estate Services provided by us under these Estate Terms (whether by signing a Letter of Engagement or otherwise) shall constitute your acceptance of and agreement to be bound as a Client by these Estate Terms.
- 1.3 The Digital Executor's retention of the Digital Executor Key for the purpose of the Estate Services provided by us under these Estate Terms (whether or not the Digital Executor is a party to a Letter of Engagement or otherwise) shall constitute the Digital Executor's acceptance of and agreement to be bound by these Estate Terms as the holder of one of the Permitted Keys associated with the Wallet (each as defined below).
- 1.4 We will notify you and the Digital Executor of any amendments to these Estate Terms by giving you and the Digital Executor a minimum of thirty (30) days' notice by email to the email addresses provided to us as part of your account registration, or a notification via SMS or other messaging service; or presenting the revised Estate Terms to you when you log into the Services. The updated Estate Terms will become effective on the date specified in the notice or in the revised Estate Terms, unless you accept them earlier online or offline. Any continued use by you or the Digital Executor of any of the Services will indicate your and the Digital Executor's acceptance of the amendment.

2. Interpretation

2.1 Definitions:

In these Estate Terms, initially-capitalised terms shall have the meanings given to them in the Terms unless otherwise defined below:

Accession Document means a deed, letter or other instrument in such form as Everlasting may specify which is signed or to be signed by the Digital Executor and under which the Digital Executor agrees to be bound as a Digital Executor by these Estate Terms.

Client Keys has the meaning given to it in clause 3.2(b).

Commencement Date means either (a) the date specified in the Letter of Engagement or (b) if no such date is specified, the date on which we first commence providing the Estate Services to you or (c) such other date as the parties may agree in writing.

Confidential Information has the meaning given to it in the Terms, and additionally includes (in relation to the Confidential Information of Everlasting) any such information relating to Everlasting, its Related Companies and/or clients, shareholders, directors, officers and employees of any of them.

Estate Services means all Digital Asset estate management, Wallet creation, or other related services provided by or on behalf of Everlasting to the Client relating to our "Estate" product from time to time under these Estate Terms.

Everlasting has the meaning given to it in clause 1.1.

Everlasting Keys has the meaning given to it in clause 3.2(a).

Fees has the meaning given to it in the Terms and includes any fee(s) stated in the Letter of Engagement and/or the Fee Schedule (and **Fees** shall be construed accordingly) relating to the Estate Services.

Terms means Everlasting's general terms and conditions in force from time to time (these Estate Terms being the "Estate Terms" as defined in and for the purposes of the Terms).

Digital Executor Key has meaning given to it in clause 3.2(c).

Mentally Incapable has the meaning given to it in section 94 of the Protection of Personal and Property Rights Act 1988.

Minimum Period means any minimum period of appointment specified in the Letter of Engagement, provided that if no such period is specified then no Minimum Period shall apply.

Permissioned Key has the meaning given to it in clause 3.2.

Termination Date has the meaning given to it in clause 9.3.

Wallet means each three-of-five multisignature wallet created or to be created by Everlasting for your Digital Assets in accordance with clause 3.

- 2.2 **Interpretation:** The interpretation provisions of clause 2.2 of the Terms shall apply to these Estate Terms. As between the Digital Executor and Client, the Digital Executor's letter and terms of engagement should prevail.

3. Transition, transfer of digital assets and Permissioned Keys

- 3.1 **Transition:** Where any Wallet has been created by Everlasting for you in accordance with the Terms before commencement of the Estate Services, in order for Everlasting to commence providing the Estate Services for your Digital Assets under these Estate Terms, you will need to transfer or procure the transfer of those Digital Assets to the Wallet(s) created in accordance with clause 3.2. Any Wallet created under these Estate Terms shall have the functionality referred to in clause 3.2.
- 3.2 **Permissioned Keys:** Any Wallet created by Everlasting in accordance with these Estate Terms for the purpose of providing the Estate Services shall require five individual private cryptographic keys to be associated with that Wallet (collectively the **Permissioned Keys**) as follows:
- (a) two of the Permissioned Keys will be created, retained and controlled by Everlasting (the **Everlasting Keys**) for the limited purpose of providing the Estate Services only in accordance with these Estate Terms and any Authorised Instructions;
 - (b) two of the Permissioned Keys (the **Client Keys**) will be retained and controlled by you and will comprise your pre-existing key and/or keys created by you specifically for the purposes of these Estate Terms; and

- (c) one Permitted Key (the **Digital Executor Key**) will be retained and controlled by the Digital Executor and will comprise a pre-existing key or a key created by the Digital Executor specifically for the purposes of these Estate Terms,

and the provisions of clause 8.2 of the Terms shall not apply.

3.3 **Digital Executor Key:** The Digital Executor agrees to hold the Digital Executor Key subject to and conditional on completion of applicable client on-boarding with the Digital Executor and other legal requirements. The Digital Executor agrees to use the Digital Executor Key only for the purpose of giving effect to Authorised Instructions from the Clients and/or from the Clients' Authorised Representatives acting in that capacity.

3.4 **Appointment / replacement of Digital Executor:** The parties acknowledge and agree that, subject to any Minimum Period, the Client may by not less than seven days' notice in writing to the other party or parties:

- (a) (where no party is specified in the Letter of Engagement as the Digital Executor on the date of execution by you and Everlasting) appoint a third party to act as the Digital Executor; and
- (b) remove any Digital Executor appointed by you and appoint a successor to the removed Digital Executor,

provided that, at the election of Everlasting, any such appointment shall be subject to and conditional on the appointee agreeing in writing (whether by executing an Accession Document or otherwise) to be bound by the Letter of Engagement and these Estate Terms as a Digital Executor.

4. Fees

Fees for the Estate Services: In consideration for the provision of the Estate Services, you will pay all applicable Fees. Any such Fees shall (unless expressly agreed in writing by us or by the Digital Executor) exclude any fees, disbursements or taxes payable to the Digital Executor.

5. Acknowledgement and agreement by you / your Digital Executor

In addition to the acknowledgements and agreements by you and the Digital Executor stated in clause 9 of the Terms, you and your advisors (which may include your Digital Executor if instructed to do so) are responsible for ensuring that all applicable trusts and estates documentation (which may include your will, trust deed or other deed, agreement or document) is compatible with and gives effect to the arrangements established through the provision of the Estate Services under these Estate Terms and none of Everlasting, its Related Companies nor any clients, shareholders, directors, officers and employees of any of them, will have any liability for your or your advisors' failure to discharge such responsibility.

6. Authorised Instructions

6.1 **Authorised Instructions in relation to Estate Services:** In addition to the provisions relating to Authorised Instructions contained in clause 11 of the Terms, Everlasting or your Digital Executor (as applicable) will only act in relation to your Digital Assets upon receipt of Authorised Instructions from you or from your Authorised Representative(s) that are received and verified by Everlasting or your Digital Executor (as applicable) in accordance with their own respective internal procedures and these Estate Terms, including to:

- (a) carry out any action affecting your Digital Assets and/or your Wallet(s);

- (b) transfer your Digital Assets to another wallet that the Client has knowledge and control over;
- (c) transfer your Digital Assets to your beneficiaries' wallets on your death or incapacitation.

6.2 **Rejection of Authorised Instructions:** In addition to the provisions relating to Authorised Instructions contained in clause 11 of the Terms, Everlasting or your Digital Executor (as applicable) may refuse to execute any Authorised Instructions if in the reasonable opinion of Everlasting or your Digital Executor (as applicable) any such Authorised Instruction has been given under duress.

7. Death and/or Mental Incapacity of Client

- 7.1 **Effect of Death:** If Everlasting or your Digital Executor receives legal documentation from the Client's Authorised Representative confirming the death of the Client, or any other information which reasonably leads them to believe that the Client has died, each will promptly notify the other in writing.
- 7.2 **Transfer of Asset:** In the event of the death of the Client, Everlasting will not transfer any Digital Assets to anyone until we receive proof in a form satisfactory to us that the Client has died. Upon Everlasting being so satisfied, we will transfer the Digital Assets in accordance with the Authorised Instructions of your Authorised Representative, subject to clause 7.6.
- 7.3 **No Will (Intestate):** Where you died without a valid Will, Everlasting is entitled to:
- (a) treat any person entitled to inherit the Digital Assets as the Client's Authorised Representative, provided we are satisfied that that person is entitled to inherit the relevant Digital Asset; and/or
 - (b) facilitate at your cost an order from the High Court of New Zealand to have an administrator appointed to oversee the inheritance of your Digital Assets.
- 7.4 **No Enduring Powers of Attorney:** If you become Mentally Incapable without valid Enduring Power(s) of Attorney in place, Everlasting is entitled to:
- (a) treat any person entitled to apply to the court for appointment as the Client's property manager and/or welfare guardian as the Client's Authorised Representative, provided we are satisfied that that person is entitled to make such application; and/or
 - (b) facilitate at your cost an order from the court to have a property manager and/or welfare guardian appointed to oversee the management of your Digital Assets.
- 7.5 **Authorisation to inquire:** You authorise us to make all necessary inquiries, either directly or through third parties, to ascertain whether or not the Client or a settlor of the client has either died or become Mentally Incapable.
- 7.6 **Transaction Fees:** Everlasting may deduct or set off from any Digital Assets transferred or otherwise dealt with under this clause 7:
- (a) any Fee specified for such transfer in accordance with the Fee Schedule;
 - (b) any Fees, disbursements, taxes or other sums which are due and outstanding to Everlasting or to any Related Company of Everlasting;

- (c) any fees, disbursements, taxes or other sums which are due and outstanding to the Digital Executor (subject to Everlasting promptly remitting the same to or otherwise as directed by the Digital Executor);
- (d) any costs incurred in facilitating a court application(s) or making inquiries.

8. Confidentiality

- 8.1 In addition and without prejudice to any professional obligations of confidentiality the Digital Executor may owe in relation to such information, the Digital Executor agrees to be bound by clause 7 of the Terms (*Confidentiality*) in relation to the Confidential Information of the Client and of Everlasting as if it were a Receiving Party (as defined in that clause). [The Client agrees that the Digital Executor and Everlasting may share Client information between themselves in relation to the provision of services by them respectively to the Client.](#)

9. Term and termination

- 9.1 **Term:** The term of these Estate Terms shall commence on the Commencement Date and shall terminate when terminated pursuant to this clause 9.
- 9.2 **Termination for default:** To the maximum extent permitted by applicable law, Everlasting may suspend or terminate your access to the Estate Services with immediate effect based upon (i) a material or persistent breach by you of these Estate Terms, which breach is either incapable of remedy or (if capable of remedy) has not been remedied within a reasonable time after our notice to you specifying the default and requiring it to be remedied, or (ii) if any Wallet associated with you is engaged in any activity in violation of applicable laws.
- 9.3 **Termination at will:** Either Everlasting or the Client may terminate these Estate Terms, in whole or in part, with or without cause, by giving not less than twenty (20) Business Days' prior written notice to the other and to the Digital Executor (the termination date specified in such written notice being the **Termination Date**), provided that no termination by you without cause may take effect prior to the end of the Minimum Period. If you choose to terminate our engagement and cease using our Services, you must sign an exit signature and broadcast an exit transaction to Ethereum.
- 9.4 **Effect of termination:** Upon termination of these Estate Terms, Everlasting shall deliver your Digital Assets in accordance with an Authorised Instruction from you or your Authorised Representative (subject to compliance with our legal obligations). If by the Termination Date you have not given instructions to us regarding how or where to deliver the Digital Assets, we will hold the Digital Assets on trust as bare trustee for the Client in accordance with these Estate Terms until otherwise instructed by an Authorised Instruction from your Authorised Representative. Upon such termination, your ability to access and use the Estate Services will be discontinued and the Everlasting Keys for the Wallet(s) will be revoked.
- 9.5 **Revocation of Permissioned Keys:** To the extent not automatically revoked from the relevant Wallet, Everlasting will revoke any and all of the Everlasting Keys relating to that Wallet following termination of these Estate Terms in accordance with this clause 13 and delivery of the Digital Assets in accordance with an Authorised Instruction from your Authorised Representative.
- 9.6 **Surviving Terms:** Clauses 8 to 11 inclusive of these Estate Terms and any other clause required to give effect to or interpret these Estate Terms after termination shall survive termination of these Estate Terms. Any such termination shall be without prejudice to any rights that may have accrued to any party up to and including the date of such termination.

10. General provisions

- 10.1 **Notices:** For the purpose of the notice provisions of clause 16.1 of the Terms, the address (including electronic mail address) of the Digital Executor shall be as specified in the Letter of Engagement or an Accession Document (as applicable).
- 10.2 **Privity:** The provisions of these DAS Terms are intended to be for the benefit of, and to be enforceable under the contractual privity provisions of the Contract and Commercial Law Act 2017 by, the Digital Executor.
- 10.3 **Other general provisions:** The remaining provisions of clause 16 of the Terms shall apply to these Estate Terms.