

General Terms and Conditions

Everlasting Nominees Limited

(last updated 24 April 2023)

1. General

- 1.1 The terms and conditions set out in this document (**Terms**), together with the Letter of Engagement, the Estate Terms (where applicable) and any other applicable terms and conditions referred to in the Letter of Engagement (together the **Contract**), form a contract between Everlasting, you and (where applicable) the Digital Executor. The Contract governs your access and use of any Services provided by us (whether through the Everlasting website or platform, any mobile applications or otherwise) in relation to your Digital Assets, including in relation to our "Secure", "Estate", "Wealth" and "Staking" products.
- 1.2 By purchasing, accessing, inquiring about, or using the Services, you are accepting and agreeing to these Terms. If you do not agree to these Terms then you may not use the Services.
- 1.3 We will notify you of any amendments to these Terms by giving you a minimum of thirty (30) days' notice by email to the email address that you provided to us as part of your account registration, or a notification via SMS or other messaging service; or presenting the revised Terms to you when you log into the Services. The updated Terms will become effective on the date specified in the notice or in the revised Terms, unless you accept them earlier online or offline. Any continued use by you of any of the Services will indicate your acceptance of the amendment.
- 1.4 Everlasting may from time to time adopt, review and amend its internal policies and procedures relating to the provision of the Services, or impose such additional policies and procedures, as Everlasting, in its sole and absolute discretion, may consider necessary or advisable. The Client and Digital Executor (as applicable) will abide by all such policies and procedures.

2. Interpretation

2.1 Definitions:

In these Terms, initially-capitalised terms shall have the meanings given to them below:

Authorised Instruction means any written notice, request, certificate, or other instrument in relation to your Digital Assets which is (a) in English, (b) in such form as we may require, (c) received by Everlasting and/or your Digital Executor, (d) believed in good faith by Everlasting or your Digital Executor (as applicable) to be genuine and (e) signed (where required) by the Client or your Authorised Representative.

Authorised Representative means any representative of the Client who is duly authorised by you (whether by agreement, at law or otherwise) to act on your behalf in relation to your Digital Assets, which may by way of example include your executor(s), attorney(s), property manager and/or the trustee or co-trustees of any trust established by you to hold your Digital Assets.

Business Day means any day other than a Saturday, Sunday or a day on which a public holiday is observed in Auckland, New Zealand.

Client, you or your means the person or entity to whom we provide the Services.

Confidential Information of a party means all information which is confidential in nature, marked as confidential or which is disclosed in circumstances such that it could reasonably be assumed to be confidential, and which relates to that party or which is used in or otherwise relates to that party's business, intellectual property, customers or financial or other affairs, existing in whatever form and whether coming to a party's knowledge in the course of fulfilling that party's obligations to the other party or parties or otherwise.

Contract has the meaning given to it in clause 1.1.

Client Keys has the meaning given to it in clause 8.2(b).

Digital Asset means any cryptocurrency or other digital asset(s) in respect of which Everlasting provides the Services.

Digital Executor has the meaning given to it in the Estate Terms.

Digital Executor Key has the meaning given to it in the Estate Terms.

Estate Terms means our separate *Estate Terms and Conditions* applicable to the provision of Services relating to our "Estate" product.

ETH means the Ether cryptocurrency.

Ethereum means the Ethereum blockchain and any rules or protocols thereof, and including any upgrades to that blockchain (including Ethereum 2.0) and any phases of such upgrades.

Everlasting, we, our or us means Everlasting Nominees Limited (company number: 8443461) and/or any Related Company of Everlasting Nominees Limited.

Everlasting Key has the meaning given to it in clause 8.2(a).

Fees means any fees payable from time to time by you to Everlasting (or to any Related Company of Everlasting) in respect of the Services, as may be set out in a Letter of Engagement, the Estate Terms and/or in our Fee Schedule.

Fee Schedule means our fee schedule from time to time, as may be provided to you or made available on our website and which fee schedule we may change from time to time on notice to you.

Letter of Engagement means a letter or other document signed by or among Everlasting and the Client containing among other things the commercial terms on which we agree to provide certain services to you and any applicable Special Condition(s).

Permissioned Key has the meaning given to it in clause 8.2.

Related Company has the meaning given to it in section 2(3) of the Companies Act 1993, provided that a reference to "company" in that section refers to any body corporate notwithstanding its jurisdiction of incorporation (and **Related Companies** shall be construed accordingly).

Services means any and all services provided by or on behalf of Everlasting to the Client from time to time in relation to the Client's Digital Assets, which may include Wallet creation services, key custody services, identity verification services, Digital Asset staking services among others.

***Special Condition** means any special condition(s) stated in the Letter of Engagement which expressly modifies, negates or supersedes one or more of these Terms, the Estate Terms or any other document forming part of the Contract.

Transaction means any interaction with your Wallet, whether by way of deposit, withdrawal of Digital Assets or otherwise (and **Transact** shall be construed accordingly).

Wallet means a wallet created or to be created by Everlasting for your Digital Assets pursuant to these Terms or Estate Terms (as applicable).

2.2 **Interpretation:** In these Terms, unless the context requires otherwise:

- (a) headings are for convenience only and shall not affect the interpretation of these Terms;
- (b) a reference to these Terms is a reference to these Terms as amended, varied or substituted from time to time;
- (c) references to clauses are to clauses in these Terms;
- (d) references to an agreement, contract, deed, or other instrument includes each and every amendment or variation of such agreement, contract, deed or other instrument (including as applicable pursuant to these Terms)
- (e) the use of the word **including** (or any derivative of it) shall not imply any limitations;
- (f) a word denoting a **person** includes individuals, corporations, firms, unincorporated bodies, authorities and instrumentalities;
- (g) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (h) where a word or phrase is given meaning, any other part of speech or grammatical form has a corresponding meaning;
- (i) references in these terms to Digital Executor and Digital Executor Key are only applicable to the provision of Services relating to our "Estate" product in accordance with the Estate Terms;
- (j) if there is any inconsistency or conflict between the Letter of Engagement, these Terms and/or the Estate Terms, the documents will prevail in the following descending order of precedence:
 - (i) the Letter of Engagement;
 - (ii) the Estate Terms; and
 - (iii) these Terms; and
- (k) to the extent permitted by law, the terms of the agreement formed by the Letter of Engagement, the Estate Terms (where applicable) and any other applicable terms and conditions referred to in the Letter of Engagement, prevail over the terms of engagement between a Digital Executor and the Client.

3. Client on-boarding

3.1 Any use by the Client of the Services shall be subject to and conditional on your compliance with our client on-boarding procedures, which may include:

- (a) any initial and on-going identity verification or other customer due diligence and monitoring that we may be required to carry out by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**); and
- (b) where applicable, Everlasting being satisfied that you are a "wholesale investor" (as such term is defined in the Financial Markets Conduct Act 2013 (**FMCA**)) or otherwise subject to an applicable exclusion under Part 1 of Schedule 1 to the FMCA.

- 3.2** You authorise us to collect information about you (including customer due diligence information), to obtain, exchange, hold, and use such information, and to make any other enquiries we think appropriate to:
- (a) confirm information provided to us about you is true;
 - (b) comply with any legal obligations we may have, including under the AML/CFT Act and the FMCA; and
 - (c) allow the Digital Executor to complete any initial and on-going identity verification or other customer due diligence and monitoring that the Digital Executor may be required to carry out under the AML/CFT Act relating to you,

subject always to clause 6 (*Privacy*).

- 3.3** You accept that we may use third party service providers to verify your identity, conduct other customer due diligence or monitoring required under the AML/CFT Act and verify your status as a "wholesale investor" under the FMCA.
- 3.4** Everlasting has the sole and absolute discretion to refuse to provide any Services to you for any reason or no reason and/or to limit the number of Wallets created for you.

4. Services

- 4.1 Services generally:** During the term of our engagement under these Terms, we will provide you access to and use of the Services through the internet. Your right to access and use the Services hereunder is limited, non-transferable, non-sublicensable and subject to your full compliance with these Terms and (where applicable) the Letter of Engagement and/or the Estate Terms.
- 4.2 Restrictions on use of Services:** You agree that you will not (and will not authorise, permit, or encourage any third party to): (i) attempt to gain unauthorised access to the accounts or information of other users of the Services; (ii) use the Services in violation of any applicable law; or (iii) attempt to circumvent any security measure associated with the Services, access the Services from any location in which it is not offered, or attempt to circumvent any access restrictions.
- 4.3 Standard of Services:** Everlasting will perform the Services:
- (a) In a professional and courteous manner;
 - (b) In compliance with all applicable laws; and
 - (c) Where applicable, in accordance with the Letter of Engagement and/or the Estate Terms.
- 4.4 Taxes:** You are solely responsible for the payment of any applicable taxes with respect to your Digital Assets including any gain in value. Everlasting nor any of its respective agents shall provide or be liable for any advice or guidance with respect to your tax obligations. The tax characterisation of the Transactions contemplated by these Terms and Estate Terms under the laws of certain countries may be unclear. You are strongly encouraged to seek advice from your own tax advisor to discuss the potential tax consequences of your Digital Assets.

5. Fees

- 5.1 You will pay us any and all Fees for our provision of the Services. The Fees are expressed as exclusive of GST.
- 5.2 In addition to the Fees, you shall pay to Everlasting any reasonable disbursements or other expenses incurred by Everlasting in connection with its performance of the Services to the extent the relevant disbursement or expense is approved by you in advance (such approval not to be unreasonably withheld or delayed).
- 5.3 Unless otherwise agreed with you in writing (including in any Letter of Engagement and/or the Estate Terms, if applicable), we shall invoice you for Services on an as-provided basis. All invoices submitted by us to you for the Services supplied by us pursuant to these Terms or the Estate Terms will:
- (a) Constitute a tax invoice for GST purposes; and
 - (b) Specify the Services supplied and the date(s) of supply;
- 5.4 Each invoice issued by us to you will be payable within 14 days of the date of the invoice.
- 5.5 If you fail to pay any amount due to Everlasting under the Contract by the relevant due date, you acknowledge and agree that:
- (a) you are liable to pay to Everlasting interest on the amount unpaid (both before and after judgment) at a rate of the Official Cash Rate (as published from time to time by the Reserve Bank of New Zealand) plus 5% annually, calculated on a daily basis from and including the due date for payment until the unpaid amount is paid in full;
 - (b) you are also liable to pay to Everlasting all costs and expenses (including legal costs on a solicitor client basis) incurred by Everlasting in relation to your failure to comply with your payment obligations; and
 - (c) Everlasting may suspend performance of all or the relevant Services until all overdue amounts are paid. Everlasting will recommence the performance of such Services as soon as practicable after all overdue payment has been made.
- 5.6 You may not:
- (a) deduct or withhold from the amount payable under an invoice any amounts for any tax or any other reason unless the withholding or deduction are required by law; and
 - (b) set-off against or deduct from the amount payable under an invoice any amounts that are due to you by Everlasting.
- 5.7 To the extent that any Fee is payable annually, that Fee may be varied by Everlasting with effect from each anniversary of the Commencement Date by Everlasting giving you at least twenty (20) Business Days' prior written notice of the variation.

6. Privacy

- 6.1 Our privacy policy governs any "personal information" (as such term is defined in the Privacy Act 2020) that we collect from you in the course of providing the Services. Everlasting will:

- (a) comply with all applicable privacy laws in respect of Everlasting processing your personal information; and
- (b) not do or omit to do anything that will cause you to breach your obligations under any applicable privacy law.

7. Confidentiality

- 7.1 **Confidentiality:** The Client and Everlasting (**Receiving Party**) each acknowledges that the Confidential Information of the other (**Disclosing Party**) is valuable to the Disclosing Party. The Receiving Party undertakes to keep the Confidential Information of the Disclosing Party confidential, and to protect and preserve the confidential nature of that information.
- 7.2 **Use and disclosure of Confidential Information:**
- (a) The Receiving Party may only use or reproduce the Confidential Information of the Disclosing Party for the purposes of performing the Receiving Party's obligations or exercising its rights under these Terms, the Letter of Engagement or the Estate Terms.
 - (b) The Receiving Party must not disclose the Confidential Information of the Disclosing Party to any person except as permitted by these Terms, the Letter of Engagement or the Estate Terms.
- 7.3 **Disclosure of Confidential Information:** The Receiving Party may disclose Confidential Information of the Disclosing Party to:
- (a) such of the Receiving Party's personnel, contractors and Related Companies as is necessary to fulfil its obligations under these Terms, the Letter of Engagement and/or the Estate Terms (as applicable);
 - (b) the extent that Confidential Information already is or becomes public knowledge other than as a result of a breach of this clause 7;
 - (c) the extent that Confidential Information can be proven to be already known by the Receiving Party as the time of the disclosure by the Disclosing Party, other than as a result of any disclosure under these Terms and other than as a result of a breach of this clause 7;
 - (d) any person with the prior written consent of the Disclosing Party; or
 - (e) the extent the disclosure is required by law.

8. Wallet creation, transfer of digital assets and Permissioned Keys

- 8.1 **Wallet creation:** Subject to and conditional on completion of any applicable client on-boarding procedures as may be required from time to time by Everlasting, Everlasting may create one or more Wallet(s) on your behalf, suitable for those of your Digital Assets the subject of the Services. Any such Wallet(s) shall have the functionality referred to in clause 8.2 (or any equivalent clause contained under the Estate Terms). In order for Everlasting to commence providing the Services for your Digital Assets, you will need to transfer them to the relevant Wallet(s). You confirm to us that (a) you are the beneficial owner of any and all Digital Assets transferred by you into the Wallet(s) (or you act as trustee on behalf of the beneficial owner), (b) you will provide details of the beneficial owner if requested by Everlasting and (c) all such Digital Assets are free and clear of any liens, charges, encumbrances security interests or other impediments.

- 8.2 **Permissioned Keys:** Any Wallet Created by Everlasting in accordance with these Terms shall (unless otherwise specified, for example in our Estate Terms) require three individual private cryptographic keys to be associated with that Wallet (collectively the **Permissioned Keys**) as follows:
- (a) one of the Permissioned Keys will be created, retained and controlled by Everlasting (the **Everlasting Key**) for the limited purpose of providing the Services only in accordance with these Terms and any Authorised Instructions; and
 - (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 Terms.
- 8.3 **Third Party Key Creation:** Where you and/or the Digital Executor require our assistance with creation of any Client Key and/or any Digital Executor Key, Everlasting may refer you and/or the Digital Executor (as applicable) to a third party service provider to assist in creating the Permissioned Keys (subject always to clause 12.2).
- 8.4 **Everlasting Key:** Everlasting agrees to use the Everlasting Key for the purpose of giving effect to Authorised Instructions only and for no other purpose.
- 8.5 **Bare Trust:** Notwithstanding any other provisions of these Terms and/or of the Estate Terms (as applicable):
- (a) the Client at all times retains legal and beneficial ownership of all Digital Assets held in the Client's Wallet(s) and of the smart contract giving effect to the Wallet;
 - (b) to the extent that legal title to your Digital Assets is held by Everlasting or the Digital Executor, Everlasting or the Digital Executor (as applicable) holds that title for the Client as a bare trustee; and
 - (c) to the extent that Everlasting has or is deemed to have custody of any of your Digital Assets, Everlasting will segregate your Digital Assets such that they can be separately identified from any other clients.
- 8.6 **Security of Digital Assets:** Everlasting may take such steps that it determines, in its sole discretion, may be necessary or advisable to maintain and protect the security of your Digital Assets, the Wallet(s) and any Everlasting Key(s), whether created under these Terms, the Estate Terms or otherwise.

9. Acknowledgement and agreement by you / your Digital Executor

- 9.1 **Network control and forking:** You and the Digital Executor acknowledge and agree that:
- (a) Everlasting does not own or control the underlying software protocols (including of Ethereum) which govern the operation of Digital Assets;
 - (b) Digital Asset protocols are subject to changes in protocol rules (referred to as "forks"), and such forks may materially affect the value, function, or name of the Digital Asset and that:
 - (i) Everlasting is not responsible for operation of the underlying Digital Asset protocols;

- (ii) Everlasting makes no guarantee of the functionality, security, or availability of such protocols; and
- (iii) if a fork occurs, Everlasting may temporarily suspend the Services relating to the Digital Asset affected, may decide not to support the forked protocol entirely or may configure its Services to enable you to transfer the affected Digital Asset.

9.2 Wallets and Digital Assets: Your Wallets and your Digital Assets are your responsibility.

Everlasting cannot cause any Transactions to take place in relation to your Wallets except in conjunction with an Authorised Instruction by you or by someone holding one of the Client Keys or the Digital Executor Key. You may need all private cryptographic keys not controlled by Everlasting to initiate any Transaction relating to your Digital Assets if for any reason any Everlasting Key are inaccessible (for example in event of the winding up or other insolvency event of Everlasting).

9.3 Passwords and Security: You and your Digital Executor are responsible for maintaining adequate security and control of, and for keeping confidential and preventing unauthorised access to, any and all log in IDs, passwords, private keys (including the Client Keys and the Digital Executor Key, respectively), personal identification numbers (PINs), and any other codes that you and/or your Digital Executor use to access the Wallets. You and your Digital Executor must not authorise any third party to access or use the Service, the Permitted Keys or PINs on your behalf, unless we provide an approved mechanism for such use. You will be responsible, and Everlasting will have no liability, for all Transactional activity that takes place using your or your Digital Executor's Permitted Keys, PINs or other account credentials, whether or not authorised by you. You acknowledge and agree that control of all of such Permitted Keys will allow the transfer all of your Digital Assets from your Wallet and you may never regain those Digital Assets.

9.4 Risks: You acknowledge that using Digital Assets, their networks and protocols, involves serious risks, including that (1) the value of Digital Assets can change rapidly, increase or decrease unexpectedly, and potentially even fall to zero, (2) a Transaction may be unconfirmed on the relevant Digital Asset network for a period of time (usually less than one hour, but up to one day or longer) and may be never complete if it remains in a pending state, and (3) if you send Digital Assets from your Wallet to another wallet that does not support those Digital Assets, your Digital Assets will be lost entirely and will not be recoverable. Even where we alert you to some of the risks involved with Digital Assets, their protocols and networks, Everlasting has no responsibility to alert you to all of these risks. Do your research and seek legal advice before committing yourself.

10. Standard of care and internal controls

10.1 We will, in performing the Services under these Terms and the Estate Terms (as applicable), use a standard of care, diligence and skill equal to, or exceeding that which would be exercised in the same circumstances by (a) Everlasting in relation to its own digital assets (if any) and (b) by a reasonable third party provider of services similar to the Services.

10.2 Without prejudice to the generality of clause 10.1, Everlasting will:

- (a) maintain internal systems of accounting and control so that:
 - (i) the Everlasting Key(s) (whether created in accordance with these Terms or the Estate Terms) is/are safeguarded from disclosure to or access by any third party; and

- (ii) any and all Transactions in relation to the Digital Assets and/or the Wallet(s) are conducted only in accordance with Authorised Instructions made under these Terms and/or Estate Terms (as applicable);
- (b) ensure that the internal systems of accounting and control referred to in (a) are regularly audited; and
- (c) obtain and maintain insurance coverage which Everlasting considered commercially reasonable.

11. Authorised Instructions

11.1 **Authorised Instructions:** Everlasting 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 in accordance with its own internal policies and procedures, these Terms and the Estate Terms (as applicable), including to:

- (a) issue a new Client Key; or
- (b) revoke any Permissioned Key.

11.2 **Applicability of Authorised Instructions:** Authorised Instructions shall continue in full force and effect until executed (or, prior to such execution, until cancelled or revoked in like manner).

11.3 **Reliance on Authorised Instructions:** Everlasting and your Digital Executor, in the performance of their respective duties under these Terms and Estate Terms (as applicable), may rely on any Authorised Instructions received and executed in good faith without having any liability for such reliance.

11.4 **Rejection of Authorised Instructions:** Everlasting or your Digital Executor (as applicable) may refuse to execute any Authorised Instructions if:

- (a) in the reasonable opinion of Everlasting or your Digital Executor (as applicable) such Authorised Instructions fall outside the scope of its duties under these Terms or Estate Terms (as applicable) and or any other relevant agreement;
- (b) any Authorised Instructions are ambiguous or conflicting, in which case Everlasting or your Digital Executor (as applicable) may refuse to execute the Authorised Instructions until any ambiguity has been resolved;
- (c) in the sole and absolute discretion of Everlasting or your Digital Executor (as applicable) based on their respective policies and procedures, Everlasting or your Digital Executor (as applicable) either:
 - (i) reasonably doubts the Authorised Instruction's content, authorisation, origination, or compliance with the policies and procedures of Everlasting or your Digital Executor (as applicable); or
 - (ii) reasonably considered that execution of the Authorised Instructions would be in violation of any applicable law.

11.5 **Acknowledgement of Risk:** The Client expressly acknowledges that the use of electronic communications systems to convey fs does not eliminate the risk of error and fraudulent activities or security and privacy issues.

12. Sub-contracting and third party products

- 12.1 **Sub-contracting to Third Parties:** Everlasting may perform any of its duties or obligations under these Terms and the Estate Terms (as applicable) through depositories, key management service providers, sub-contractors or agents (including any of our Related Companies) (each a **Third Party**), whenever and on such terms and conditions as Everlasting deems necessary or advisable to perform such duties, obligations or liabilities under these Terms and the Estate Terms (as applicable), provided that Everlasting must act in good faith and use reasonable care in the selection and continued appointment of such Third Parties.
- 12.2 **Third Party Products:** In connection with your use of the Services, Everlasting may from time to time make you aware of or offer or make available to you products (which may include hardware and/or software such as cold wallets, services, content, features, offers and/or promotions) which are or are to be provided by third parties (individually and collectively, **Third Party Products**). However, our offer or promotion of Third Party Products does not reflect a sponsorship, endorsement, approval, investigation, verification, certification or monitoring of such Third Party Products by Everlasting. Your acquisition or use of Third Party Products, and any exchange of data between you and any non-Everlasting provider, is solely between you and such provider. Everlasting does not warrant Third Party Products in any way. Under no circumstances will we have any liability for Third Party Products. Use Third Party Products at your own risk, and under terms and conditions between you and the provider of the Third Party Products that are separate to, and may be different from, these Terms and the Estate Terms (as applicable).

13. Representations, warranties and disclaimers

- 13.1 You represent and warrant that: (i) you are of legal age to enter into the Contract; (ii) you have the authority to enter into the Contract; (iii) you do not intend to use the Services for any purpose that would be in violation of applicable laws; (iv) your use of the Services does not violate any applicable laws and (v) you are in compliance with any anti-money laundering obligations under the law of your jurisdiction or otherwise applicable to you.
- 13.2 Save for any warranties expressly given by Everlasting in these Terms and the Estate Terms, to the maximum extent permitted by applicable laws:
- (a) the Services are provided “as is” without any condition or warranty whatsoever, and the entire risk as to satisfactory quality, performance, accuracy, reliability, and completeness is with you;
 - (b) Everlasting makes no warranty that access to the Services will be uninterrupted, secure or error-free;
 - (c) Everlasting expressly disclaims all implied and statutory warranties, including without limitation, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement and all warranties arising from usage of trade and course of dealing
 - (d) Everlasting:
 - (i) does not warrant that the Services will meet your requirements or that the Services will operate in combination with other software; and
 - (ii) specifically disclaims with respect to the Services any conditions of quality, availability, reliability, security, lack of viruses, bugs, or errors.

- 13.3 To the extent that Everlasting may not as a matter of applicable law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.
- 13.4 You acknowledge that your use of the Services is at your own risk, and your reliance on any information or data contained in the Services is at your own risk.
- 13.5 You acknowledge that any risk associated with using Ethereum and/or any other blockchain or other technology or protocol(s) underlying your Digital Assets rests entirely with you, that the Services may be impacted by defects or failures in Ethereum or any such technology or protocol(s) and that Everlasting is not responsible or liable for such failures, or any other service interruption, service failure, action or inaction of any third party, or similar issue arising from or related to Ethereum or such technology or protocol(s).

14. Limitation of liability and indemnity

- 14.1 To the maximum extent permitted by applicable law, you agree that Everlasting shall not be liable for any loss of information, data, loss of income, loss of opportunity or profits, cost of recovery, personal injury, or other loss, however caused and under any theory of liability, arising from the use of the Services, or any special, incidental, consequential, or indirect damages arising out of or in connection with the use of the Services. This limitation will apply even if Everlasting has been advised of the possibility of such damages, and these limitations will apply notwithstanding any failure of essential purpose of any limited remedy provided in these Terms and the Estate Terms applicable). To the maximum extent permitted by applicable law, in no event shall Everlasting's total liability to any Client arising out of or related to these Terms and the Estate Terms (as applicable) or your use of the Services exceed the total Fees (denominated in ETH or equivalent) received by Everlasting in the twelve (12) month period immediately preceding the date on which such liability first arose.
- 14.2 You agree to defend, indemnify, and hold harmless Everlasting, and its officers, directors, managers, and employees (**Indemnified Parties**) from any and all liabilities, damages, costs, and expenses (including reasonable legal fees) incurred by such Indemnified Parties in connection with any third party action, claim, or proceeding (each, a **Claim**) arising from or related to (i) breach of any of your representations and warranties in these Terms and the Estate Terms (as applicable), (ii) your breach of any of your obligations under these Terms and the Estate Terms (as applicable), or (iii) any taxes, and related costs, interest and penalties you receive.
- 14.3 The indemnities contained in clause 14.2 are promises which confer, and are intended to confer, a benefit upon the Indemnified Parties, and accordingly the provisions of subpart 1 of part 2 of the CCLA apply to, and for the benefit of, each of them despite not being parties to these Terms and Estate Terms (as applicable).

15. Term and termination

- 15.1 **Term:** These Terms shall apply to all Services provided by us from the time at which the Client first consults with or engages Everlasting in relation to the provision of any Services.
- 15.2 **Suspension or termination for default:** To the maximum extent permitted by applicable law, Everlasting may suspend or terminate your access to the Services based upon a violation of these Terms or any other agreement, including the Letter of Engagement and/or the Estate Terms, or if any Wallet associated with you is engaged in any activity in violation of applicable laws.

- 15.3 **Termination at will:** Either Everlasting or the Client may terminate the Services, in whole or in part, with or without cause by giving not less than twenty (20) Business Days' prior written notice to the other. If you choose to terminate our engagement and cease using our Services and any of your Digital Assets are contained in any multi-sig Wallet in respect of which we hold any client keys, you must sign an exit signature and broadcast an exit transaction to Ethereum and or other relevant technology or protocol underlying your Digital Assets.
- 15.4 **Effect of termination:** Upon termination of these Terms, your ability to access and use the Services will be discontinued and the Everlasting Key for the Wallet(s) will be revoked.
- 15.5 **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 Terms in accordance with this clause 15.
- 15.6 **Surviving Terms:** Clauses 5, 7 to 16 inclusive of these Terms and any other clause required to give effect to or interpret these Terms after termination shall survive termination of these 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.

16. General provisions

- 16.1 **Notices:** All notices and other communications provided for in these Terms shall be in writing (including by electronic mail) and may be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic mail. For the purposes of these Terms, the address (including electronic mail address) of Everlasting are:

Address: 190 Jack Lachlan Drive, Beachlands, Auckland, 2018, New Zealand

Email: luke@everlasting.nz and paul@everlasting.nz

- 16.2 **Assignment:** You may not assign or otherwise transfer any of your rights or obligations under these Terms without the prior written consent of Everlasting. Everlasting may assign or otherwise transfer these Terms in conjunction with a transfer of the Services. In all cases of assignment, the assignee agrees in writing to be bound by the terms and conditions of these Terms. Any assignment or other transfer in violation of this Section will be null and void. Subject to the foregoing, these Terms will be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.
- 16.3 **Severability:** If any provision of these Terms is found invalid or unenforceable by a court of competent jurisdiction, that provision shall be amended to achieve as nearly as possible the same economic effect as the original provision, and the remainder of these Terms shall remain in full force and effect. Any provision of these Terms, which is unenforceable in any jurisdiction, shall be ineffective only as to that jurisdiction, and only to the extent of such unenforceability, without invalidating the remaining provisions hereof.
- 16.4 **Force Majeure:** Neither Party shall be deemed to be in breach of these Terms for any failure or delay in performance to the extent caused by reasons beyond its reasonable control, including, but not limited to, acts of God, earthquakes, strikes, work stoppages, shortages of materials or resources, pandemics, epidemics or associated government restrictions, mandates or lockdowns, civil or military disturbances, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services (including cloud service providers).
- 16.5 **Entire agreement:** These Terms together with the documents referred to in them constitute the entire agreement among the parties regarding the subject matter, and supersede any prior or

contemporaneous communications, representations, or agreements among the parties, whether oral or written, including, without limitation, any confidentiality or non-disclosure agreements. No term included in any confirmation, acceptance, or any other similar document from you in connection with these Terms will apply to these Terms or have any force or effect.

- 16.6 Waiver:** No failure or delay by a party in exercising any right or remedy under these Terms shall operate or be deemed as a waiver of any such right or remedy. Any waiver of any provision of these Terms must be in writing and signed by the waiving party.
- 16.7 Governing law:** These Terms shall be governed by and construed in accordance with the laws of New Zealand and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.