

# EVERFOX

## TERMS OF USE FOR EVERFOX ULTRA SERVICE (CBS MODEL)

These terms and conditions are a legal agreement between the relevant Everfox entity as set out in the Order (as defined in Section 1 of these Terms) ("**Everfox**") and you ("**Customer**" or "**You**"), as the individual or legal entity making use of the Everfox ULTRA service as set out in the Order. Each a "Party" and together the "Parties".

BY ENABLING ACCESS TO EVERFOX ULTRA FOR YOURSELF OR YOUR ORGANIZATION, YOU ARE EXPRESSLY AND EXPLICITLY ACKNOWLEDGING AND AGREEING TO THESE TERMS WHICH WILL BIND YOU. YOUR ATTENTION IS DRAWN TO THE SECTION HEADED LIMITATION OF LIABILITY WHICH INCLUDES SPECIFIC LIMITATIONS ON THE LIABILITY OF EVERFOX TOWARDS YOU, AND TO THE EVERFOX DATA PROCESSING AGREEMENT WHICH SETS OUT DETAILS OF OUR AGREEMENT FOR THE PROCESSING OF PERSONAL DATA AS DEFINED IN SECTION 1.1. BELOW.

### 1 DEFINITIONS

1.1 Except where defined above, capitalized terms in these Terms have the meaning set opposite them below:

|                                         |                                                                                                                                                                                                                                                                                         |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Access</b>                           | means access to Everfox ULTRA by Customer using one of the mechanisms available on the Everfox ULTRA Customer portal in accordance with the instructions provided by Everfox;                                                                                                           |
| <b>Access Email</b>                     | Everfox's email to Customer containing the Order Acknowledgement (as further defined below) and instructions to enable Access;                                                                                                                                                          |
| <b>Acceptable Use Policy or AUP</b>     | means Everfox's acceptable use policy for Everfox ULTRA made available at <a href="https://www.everfox.com/legal">https://www.everfox.com/legal</a> as amended from time to time;                                                                                                       |
| <b>Affiliate</b>                        | any entity that controls, is controlled by or is under common control with a Party, where "control" means ownership of more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of directors or other managing authority of a Party; |
| <b>Agreement</b>                        | the Order, the Order Acknowledgement, These Terms, the DPA, and the AUP (all as defined in this Section 1);                                                                                                                                                                             |
| <b>Authorized Users</b>                 | those employees or contractors of Customer or its Affiliates that use Everfox ULTRA as part of the Agreement;                                                                                                                                                                           |
| <b>Customer Pen Testing Policy</b>      | Everfox's policy around any penetration testing conducted by Customer on Everfox ULTRA available upon request;                                                                                                                                                                          |
| <b>Data Processing Agreement or DPA</b> | the data processing agreement terms made available at <a href="https://www.everfox.com/terms">https://www.everfox.com/terms</a> , as amended from time to time;                                                                                                                         |
| <b>Documentation</b>                    | the documentation made available by Everfox to Customer, as amended by Everfox from time to time, that describes among others the Minimum Requirements (as defined further below);                                                                                                      |
| <b>Effective Date</b>                   | takes the meaning as set out in Section 2.3;                                                                                                                                                                                                                                            |
| <b>European Economic Area or EEA</b>    | all member states of the EU, Iceland, Liechtenstein, and Norway;                                                                                                                                                                                                                        |
| <b>Fees</b>                             | the fees payable by Customer for using Everfox ULTRA in relation with the Reserved Capacity as set out in the Order;                                                                                                                                                                    |

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|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Everfox ULTRA</b>         | the web isolation service provided by Everfox under These Terms whether in the Everfox ULTRA version and/or the Everfox ULTRA Plus version, as either or both may be provided to Customer;                        |
| <b>Minimum Initial Term</b>  | the twelve (12) calendar months period starting on the Effective Date;                                                                                                                                            |
| <b>Minimum Requirements</b>  | the requirements Customer must meet to be able to use Everfox ULTRA as set out in the Documentation;                                                                                                              |
| <b>Order</b>                 | the Everfox order form signed by Customer setting out the Everfox and Customer contracting entities, the Reserved Capacity (as further defined below), the Minimum Initial Term and the Fees;                     |
| <b>Order Acknowledgement</b> | the statement contained in the Access Email confirming that Everfox has received the Order from the Customer and accepts it, including the conditions Everfox attaches to such acceptance (if any);               |
| <b>Renewal Term</b>          | takes the meaning as set out in Section 7.1;                                                                                                                                                                      |
| <b>Reserved Capacity</b>     | the maximum number of concurrent active browsing sessions on Everfox ULTRA enabled by Everfox for Customer as set out in the Order;                                                                               |
| <b>Service Acceptance</b>    | means acceptance of Everfox ULTRA by Customer as described under Section 3.3 or Section 3.5 (as applicable). References to “Accept” and “Accepted” in relation to Everfox ULTRA shall be interpreted accordingly; |
| <b>Term</b>                  | the Minimum Initial Term and any subsequent Renewal Term;                                                                                                                                                         |
| <b>These Terms</b>           | the terms and conditions set out in this document, including the Data Protection Agreement attached hereto, as amended by Everfox from time, incorporated by reference into the Order.                            |

- 1.2 Unless the context otherwise requires: (i) ‘including’ and similar words do not imply any limit; (ii) the terms ‘days’ refer to calendar days unless expressly stated otherwise; (iii) any obligation on any party not to do or to omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done; and (iv) use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision.

## 2. CONTRACT FORMATION

- 2.1 These Terms apply to any purchase and any use of Everfox ULTRA by Customer.
- 2.2 These Terms neither commit Customer to place, nor require Everfox to accept an Order.
- 2.3 An Order shall be treated as an offer by Customer to contract with Everfox and shall become binding on Everfox upon written acceptance of the Order by Everfox through the Order Acknowledgement (“**Effective Date**”).
- 2.4 No pre-printed or similar terms and conditions contained in, referred to in, or purported to be incorporated in any Customer ordering document, invoice, or other document delivered or made available by the Customer to Everfox shall be applicable, even if signed by the Parties and in case of conflict These Terms shall prevail.
- 2.5 Any deviations to These Terms shall only be enforceable where expressly captured into the “Special Terms” section of the Order.
- 2.6 In case of conflict between any of the provisions of the Agreement the following order of precedence shall apply:

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- a) first the terms set out in the “Special Terms” section of the Order (if any);
- b) then the terms contained in the rest of the Order;
- c) then These Terms;
- d) then the Data Processing Agreement as far as data processing is concerned; and
- e) finally, the AUP.

### **3. EVERFOX ULTRA**

- 3.1 In order to use Everfox ULTRA Customer shall follow the instructions set out in the Access Email and comply with the Minimum Requirements.
- 3.2 Customer shall have seven (7) calendar days from the date of the Access Email to notify Everfox if the Customer is unable to use Everfox ULTRA.
- 3.3 In the absence of a notification in accordance with Section 3.2 or where Customer’s notification was founded on issues as described in Section 3.4 Customer shall be deemed to have accepted Everfox ULTRA as of the date of the Access Email.
- 3.4 Customer recognizes that Everfox has no control over and shall have no responsibility for any issue in using Everfox ULTRA attributable to the Customer’s system or network or otherwise due to any act or omission of Customer and any technical support aimed at resolving such issues shall fall outside the scope of These Terms.
- 3.5 If the Customer notifies Everfox in accordance with Clause 3.2 and subject to Section 3.4, Everfox will take such action as is reasonably necessary to ensure Customer gains Access to Everfox ULTRA. The latter shall be deemed accepted when Everfox confirms there are no issues on the Everfox side and Access to Everfox entity is enabled for Customer.
- 3.6 Everfox reserves the right to modify all or a part of Everfox ULTRA and will use reasonable endeavors to notify Customer where such modification is likely to have a material adverse effect on to the Customer. Everfox will not be liable to Customer or to any third party for any modification of Everfox ULTRA.
- 3.7 Everfox will provide Customer with commercially reasonable support to assist Customer’s use of Everfox ULTRA. Everfox will endeavor to respond to any Customer’s incident queries via email by the end of the next business day.
- 3.8 Customer will use Everfox ULTRA to interact with the internet. Customer will ensure that its use of Everfox ULTRA materially conforms with the AUP.
- 3.9 Customer may conduct penetration testing on Everfox ULTRA subject to and in accordance with the Customer Pen Testing Policy.
- 3.10 Customer acknowledges and agrees that Everfox ULTRA is not designed to be used for any critical business data and Everfox shall have no liability in relation to Customer data beyond what is foreseen by the terms of the Data Processing Agreement and the Appendices to the Data Processing Agreement.

### **4 PERMITTED USE AND PROPRIETARY RIGHTS**

- 4.1 Subject to These Terms, Everfox hereby grants Customer a non-exclusive, non-transferable and non-sublicensable licence to Access Everfox ULTRA solely for Customer’s internal business purposes as set out in the Order for the Term.
- 4.2 Except as otherwise permitted by the Customer Pen Testing Policy, Customer will not, and will not allow any third party (including, without limitation, any Authorized User or Customer Affiliate) to do or attempt to do any of the following:
  - a) sell, distribute, disclose, rent, lease or sublicense Everfox ULTRA or otherwise make any portion of Everfox ULTRA available to any other party except as expressly permitted in These Terms;
  - b) modify or create derivative works based on any portion of Everfox ULTRA;
  - c) use any portion of Everfox ULTRA to create any competitive product or service;
  - d) use any portion of Everfox ULTRA in a manner that violates These Terms, any third party rights, or any applicable, laws, rules, or regulations;

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- e) circumvent or disable any usage rules, or other security features of Everfox ULTRA;
  - f) use Everfox ULTRA in a manner that threatens the integrity, performance, or availability of Everfox ULTRA;
  - g) use Everfox ULTRA in breach of the law (including export control laws) or the AUP.
- 4.3 Customer acknowledges and agrees that any breach of These Terms by any Customer Affiliate or Authorized User will be deemed a breach by Customer.

## 5 RESERVATION OF OTHER RIGHTS

- 5.1 Except for the rights explicitly granted to Customer under Section 4.1, no other license or rights are granted to Customer.
- 5.2 Everfox and its licensors shall at all times retain all right, title, and interest in and to Everfox ULTRA, including all related intellectual property rights.

## 6 FEES AND PAYMENT TERMS

- 6.1 In exchange for using Everfox ULTRA Customer shall pay Everfox the Fees. Everfox will invoice Customer in advance on an annual basis or with such other frequency as set out in the Order. The invoice shall be payable within the following thirty (30) days.
- 6.2 Everfox reserves the right to increase pricing at any time provided the increase shall take effect at the end of the current Minimum Initial Term or Renewal Term (as applicable) and subject to prior written notification to Customer at least one hundred and twenty (120) days prior to expiry of the then current Minimum Initial Term or Renewal Term (as applicable). In the absence of such notification or where the latter occurs later than prescribed above the price applicable to each new term shall be the previous year's price + 7.5%.
- 6.4 Any amount not paid when due shall be subject to finance charges equal to 1.5% of the unpaid balance per month determined and compounded daily from the date due until the date paid for (or, if lower, shall be the highest rate permitted by law). Customer shall reimburse any costs or expenses (including, but not limited to, reasonable legal fees) incurred by Everfox to collect any amount that is not paid when due.
- 6.5 Amounts due from Customer under this Agreement may not be withheld or offset by Customer against amounts due to the Customer for any reason. All amounts payable under this Agreement are denominated in the currency specified in the Order, and Customer shall pay all such amounts in the currency specified, free of currency exchange costs, bank charges, withholdings or deductions.
- 6.6 If Customer in good faith disputes any portion of the Fees contained in an invoice, Customer shall pay the undisputed portion of the invoice on the due date in full and submit a documented claim for the disputed amount prior to the due date. As a minimum such documented claim shall set out the amount in dispute, the reason for the dispute and provide such evidence as shall be reasonably necessary to support the dispute. The Parties shall negotiate in good faith to resolve the dispute, provided that if the dispute cannot be resolved within thirty (30) days of the date of the invoice, either Party may institute legal proceedings. If Customer does not submit a documented claim prior to the due date for payment of the invoice, Customer waives all rights to dispute the invoice.
- 6.7 All Fees under this Agreement are exclusive of Value Added Tax (VAT) or any similar indirect or sales, use or excise taxes that may be applicable. If any such sales tax is chargeable by Everfox, this shall be added to the agreed price (by way of separate invoice, if those fees have already been invoiced) and shall be paid in addition by Customer. Other than net income taxes imposed on Everfox, the Customer shall bear all taxes, duties, and other governmental charges (collectively, "Taxes") resulting from this Agreement. Customer shall pay any additional Taxes as are necessary to ensure that the net amounts received by Everfox after all such Taxes are paid are equal to the amounts that Everfox would have been entitled to in accordance with this Agreement as if the Taxes did not exist.
- 6.8 Upon Customer's request, Everfox may agree to invoice an Affiliate of the Customer, and such agreement shall be subject to the Customer remaining liable for any non-payment by the Affiliate.

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## 7 TERM AND TERMINATION

- 7.1 The Agreement shall come into force upon signature of the Order and will continue for the Minimum Initial Term. Upon expiry of the Minimum Initial Term the Agreement shall automatically be renewed for rolling consecutive periods of twelve (12) months (each a **"Renewal Term"**) unless Customer notifies Everfox in writing that it does not wish to renew the Agreement at least ninety (90) days prior to expiry of the Minimum Initial Term or the then current Renewal Term.
- 7.2 Customer may at any time increase the Reserved Capacity by placing an Order with Everfox provided that:
- a) where the increase occurs during the Minimum Initial Term and does not exceed in aggregate 10% of the Reserved Capacity purchased under the original Order the Minimum Initial Term shall remain unvaried. Everfox will invoice the Fees for the additional Reserved Capacity on the date of the increase.
  - b) where the increase occurs during the Minimum Initial Term but at any time exceeds in aggregate 10% of the Reserved Capacity purchased under the original Order a new Minimum Initial Term shall commence in relation to the total Reserved Capacity (as increased) effective from the date of the increase. In relation to the Fees already paid in advance Customer will receive a pro-rata credit for the unused period of the previous Minimum Initial Term to be used against the Fees payable in advance for the new Minimum Initial Term.
  - c) The provisions under Section 7.2 a) and 7.2 b) equally apply in relation to increases during any Renewal Term so that: (i) where the increase during a Renewal Term does not exceed in aggregate 10% of the Reserved Capacity existing at the beginning of such Renewal Term the latter shall remain unvaried; whereas (ii) if the 10% aggregate limit is exceeded during such Renewal Term a new Minimum Initial Term shall commence in relation to the total Reserved Capacity (as increased) effective from the date of the increase.
- 7.3 Upon expiry or termination of the Agreement (i) Customer's right and license to use and access Everfox ULTRA will immediately terminate; and (ii) Customer shall immediately cease use of Everfox ULTRA.
- 7.4 This Section 7.4 and Sections 2.6, 4.2, 4.3, 5.2, 9.3 and Sections 10 to 17 (inclusive) shall survive any expiration or termination of These Terms indefinitely.

## 8 DATA PROTECTION

- 8.1 The Parties shall comply with the terms of the DPA, and all applicable requirements of the Data Protection Laws as defined in the DPA.
- 8.2 The Customer warrants that it has all necessary legal basis and notices in place to enable the lawful transfer and processing of the Personal Data by Everfox which it has obtained in the course of its business with the Customer (including, without limitation, the provision of Everfox ULTRA under the Agreement).

## 9 DISCLAIMERS; NO WARRANTIES

- 9.1 To the extent permitted by the law, the Agreement, Everfox ULTRA and all materials and content are supplied as-is, including any faults. Everfox excludes all warranties, conditions, or other terms that may be implied into These Terms whether by law, statute, or otherwise. Everfox gives no condition, warranty, or other term whatsoever, either express or implied including, without limitation, any condition, warranty, or other term as to the condition of any code, or as to merchantability, satisfactory quality, fitness for a particular purpose, non-infringement or use of reasonable care and skill.
- 9.2 Everfox does not warrant that (i) Everfox ULTRA, or any portion thereof will meet Customer's requirements (ii) the use of Everfox ULTRA will be uninterrupted or error-free, or (iii) Everfox ULTRA will protect against all possible threats whether known or unknown, and Everfox does not warrant that any of those issues will be corrected.
- 9.3 The limitations, exclusions and disclaimers in this Section 9 and Section 10 below apply to the fullest extent permitted by law. Everfox does not disclaim any warranty or other right that

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Everfox is prohibited from disclaiming under applicable law.

## 10 LIMITATION OF LIABILITY

- 10.1 IN NO EVENT SHALL EVERFOX'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED IN AGGREGATE THE TOTAL PAYMENTS ACTUALLY MADE BY THE CUSTOMER TO EVERFOX FOR EVERFOX ULTRA DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION OR FIFTY THOUSAND (50,000) USD WHICHEVER IS HIGHER. WHERE THE ORDER REFERS TO A DIFFERENT CURRENCY THE AMOUNT OF THE LIABILITY CAP IN THIS SECTION 10.1 SHALL BE DEEMED TO BE IN SUCH OTHER CURRENCY.
- 10.2 IN NO EVENT SHALL EVERFOX OR ITS SUPPLIERS, AGENTS OR DISTRIBUTORS BE LIABLE FOR: (I) LOSS OF REVENUE; (II) LOSS OF ACTUAL OR ANTICIPATED PROFITS; (III) DOWNTIME COSTS (IV) LOSS OF CONTRACTS; (V) LOSS OF THE USE OF MONEY; (VI) LOSS OF ANTICIPATED SAVINGS; (VII) LOSS OF BUSINESS; (VIII) LOSS OF OPPORTUNITY; (IX) LOSS OF GOODWILL; (X) LOSS OF REPUTATION; (XI) LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR (XII) ANY INDIRECT OR CONSEQUENTIAL LOSS, AND SUCH LIABILITY IS EXCLUDED WHETHER IT IS FORESEEABLE, KNOWN, FORESEEN OR OTHERWISE. FOR THE AVOIDANCE OF DOUBT, SECTION 10.2(I) – 10.2(XI) APPLY WHETHER SUCH LOSSES ARE DIRECT, INDIRECT, CONSEQUENTIAL OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER OR NOT EVERFOX WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.
- 10.3 NOTHING IN THESE TERMS SHALL LIMIT OR EXCLUDE LIABILITY FOR: (I) DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE; OR (II) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (III) ANY OTHER MATTER WHICH CANNOT, AS A MATTER OF LAW, BE EXCLUDED OR LIMITED.
- 10.4 UNLESS EXPRESSLY PROVIDED HEREIN, EVERFOX IS NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE USE OF EVERFOX ULTRA. CUSTOMER UNDERSTANDS AND AGREES THAT CUSTOMER'S USE OF EVERFOX ULTRA IS AT CUSTOMER'S OWN DISCRETION AND RISK, AND THAT EVERFOX AND THE EVERFOX AFFILIATES AND ITS LICENSORS ARE NOT RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S PROPERTY (INCLUDING CUSTOMER'S COMPUTER SYSTEM OR MOBILE DEVICES USED IN CONNECTION WITH THE USE OF EVERFOX ULTRA) OR ANY LOSS OF DATA.

## 11 CUSTOMER INDEMNIFICATION

- 11.1 IN THIS SECTION "**ASSOCIATES**" MEANS OFFICERS, DIRECTORS, EMPLOYEES, CONSULTANTS, AFFILIATES, SUBSIDIARIES AND AGENTS AND A "**CLAIM**" IS ANY CLAIM, DEMAND, SUIT, LOSS, DAMAGE, LIABILITY, COST OR EXPENSE (INCLUDING REASONABLE PROFESSIONAL FEES AND COSTS AS INCURRED).
- 11.2 TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER IS RESPONSIBLE FOR CUSTOMER'S USE OF EVERFOX ULTRA, AND CUSTOMER WILL, INDEMNIFY, DEFEND AND HOLD HARMLESS EVERFOX AND ITS ASSOCIATES FROM AND AGAINST (A) EVERY CLAIM BROUGHT BY A THIRD PARTY, AND (B) ANY CLAIM ARISING OUT OF OR CONNECTED WITH, IN EACH CASE: (I) CUSTOMER'S UNAUTHORIZED USE OF, OR MISUSE, EVERFOX ULTRA ; (II) CUSTOMER'S VIOLATION OF ANY PORTION OF THESE TERMS, ANY REPRESENTATION, WARRANTY, OR AGREEMENT REFERENCED IN THESE TERMS, OR ANY APPLICABLE LAW OR REGULATION; (III) CUSTOMER'S VIOLATION OF ANY THIRD PARTY RIGHT, INCLUDING ANY INTELLECTUAL PROPERTY RIGHT OR PUBLICITY, CONFIDENTIALITY, OTHER PROPERTY, OR PRIVACY RIGHT (INCLUDING UNDER THE DATA PROTECTION REGULATIONS); OR (IV) ANY DISPUTE OR ISSUE BETWEEN CUSTOMER AND ANY THIRD PARTY.
- 11.3 EVERFOX RESERVES THE RIGHT, AT EVERFOX'S EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY CUSTOMER (WITHOUT LIMITING CUSTOMER'S INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THAT MATTER), AND IN THAT CASE, CUSTOMER AGREES TO CO-OPERATE WITH EVERFOX'S DEFENSE OF THOSE CLAIMS.

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## 12 INTELLECTUAL PROPERTY INFRINGEMENT

- 12.1 Everfox shall defend, at its expense, any third party action or suit brought against Customer alleging that use of Everfox ULTRA infringes or misappropriates the third party's patent, copyright, trademark, or trade secret (an "**IPR Claim**"), and Everfox shall pay any costs and damages awarded in final judgment against Customer or agreed to in settlement by Everfox that are attributable to that IPR Claim.
- 12.2 In the event of an IPR Claim, Everfox shall at its sole option and expense either: (i) secure the right to the continued use of that portion of the Documentation and/or Everfox ULTRA which is the subject of the IPR Claim; or (ii) replace or modify such portions of the Documentation and/or Everfox ULTRA with non-breaching components that are functionally equivalent.
- 12.3 Everfox's obligations under this Section shall not apply to the extent any Claim results from or is based on (i) modifications to the Documentation or Everfox ULTRA made by a party other than Everfox or its Affiliates; (ii) the combination, operation, or use of Everfox ULTRA with hardware or software not supplied by Everfox, if a Claim would not have occurred but for such combination, operation or use; (iii) Everfox's compliance with Customer's explicit or written designs, specifications, or instructions; or (iv) use of Everfox ULTRA that is not in accordance with Everfox's published specifications.
- 12.4 The foregoing terms state Customer's sole and exclusive remedy for any IPR Claims

## 13 PROCEDURE FOR MANAGING CLAIMS

- 13.1 The party seeking indemnification pursuant to Sections 11 or 12 (the "**Indemnified Party**") shall (i) give the other party (the "**Indemnifying Party**") prompt notice of the relevant claim; (ii) cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in the defense of that claim and (iii) give the Indemnifying Party sole control over the defense and settlement of that claim. The Indemnified Party shall have the right to participate in the defense with counsel of its choice at its own expense.

## 14 CONFIDENTIALITY AND PUBLICITY

- 14.1 "**Confidential Information**" means (i) the existence and contents of the Agreement; and (ii) any information which is designated as 'Confidential', 'Proprietary', or some similar designation or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure of the information including product, business, market, strategic or other information or data relating to the subject matter of this Agreement, or the business or affairs of the disclosing party. "**Disclosed**" means disclosed whether in writing, orally, or by any or by inspection of tangible objects (including, but not limited to documents, prototypes, samples, plant, and equipment) or by any other means or medium (including but not limited to information retained on all types of media including written, diagrammatical, software or other storage medium), and whether such disclosure takes place before or after the date of this Agreement.
- 14.2 Each Party is referred to as the "**Recipient**" when it receives or uses the Confidential Information disclosed by the other Party. Recipient will not use any Confidential Information for any purpose not expressly permitted by These Terms, and will disclose the Confidential Information only to the employees or contractors of Recipient who have a need to know the Confidential Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty under this Section 14. Recipient will protect the Confidential Information from unauthorized use, access, loss, theft or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.
- 14.3 Confidential Information will not include any information that: (i) is, or becomes publicly known through no action or inaction of the Recipient in breach of These Terms; (ii) is already in the possession of the Recipient at the time of disclosure by the disclosing party, as shown by the Recipient's files and records; (iii) is obtained by the Recipient from a third party without a breach of the third party's obligations of confidentiality; or (iv) is independently developed by the Recipient without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the Recipient's possession.
- 14.4 Everfox may refer to Customer in its marketing materials, including, without limitation, on its

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website and in correspondence with prospective customers subject to Customer's prior written consent. Customer agrees to act as a reference customer for Everfox.

## 15 NOTICES

- 15.1 All notices, consents and approvals under or in connection with These Terms (i) shall be in writing; and (ii) shall be in the English language; and shall be sent to: [legal@everfox.com](mailto:legal@everfox.com).
- 15.2 Unless there is evidence that it was received earlier, a notice is deemed given at the time that the message enters the recipient's email server.

## 16 GENERAL TERMS

- 16.1 Each Party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution, and registration (if applicable) of These Terms.
- 16.2 Customer may not assign or transfer These Terms or any of its rights, duties or obligations hereunder by operation of law or otherwise, without Everfox's prior written consent. Everfox will have the right to assign or transfer These Terms or any interest herein (including rights and duties of performance) to any entity, at any time, and without any notice.
- 16.3 Except for any payment obligations, neither Party will be liable under These Terms by reason of any failure or delay in the performance of its obligations under These Terms caused by reason of a Force Majeure Event. "**Force Majeure Event**" is any cause beyond a Party's reasonable control including, without limitation, acts of God or public enemy, civil war, insurrection or riot, fire, flood, explosion, earthquake, pandemic, epidemic or widespread infectious disease, labor dispute causing cessation slowdown or interruption of work, national emergency, act or omission of any governing authority or agency thereof, or inability after reasonable endeavors to procure equipment, data or materials from suppliers.
- 16.4 If any part of These Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 16.5 The failure to require performance of any provision will not affect Everfox's right to require performance at any other time after that, nor will a waiver by Everfox of any breach or default of These Terms, or any provision of These Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself.
- 16.6 Nothing in These Terms creates, implies, or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. Neither Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.
- 16.7 These Terms may not be amended, nor any obligation waived, except in writing and signed by both Parties. The standard terms of any purchase order, receipt or confirmation of acceptance or similar document submitted by Customer to Everfox will have no effect.
- 16.8 These Terms, (together with any other documents expressly incorporated by reference into These Terms), constitutes the entire and exclusive understanding and agreement between Customer and Everfox and supersede all prior agreements, understandings, and communication between the Parties with respect to the subject matter hereof whether written or oral. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter These Terms.
- 16.9 No person (other than a Party), has any right under the Contract (Rights of Third Parties) Act 1999 or otherwise to enforce any term of These Terms.
- 16.10 Each Party acknowledges that any violation or threatened violation of These Terms may cause irreparable injury to the other party, entitling the other Party to seek injunctive relief in addition to all legal remedies.

## 17 GOVERNING LAW

- 17.1 These Terms will be interpreted, construed, and enforced in all respects in accordance with the laws of England and Wales. The provisions of the 1980 U.N. Convention on Contracts for the

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International Sale of Goods are excluded. Each Party hereby irrevocably consents to the exclusive jurisdiction of the courts of England and Wales in connection with any action arising out of or in connection with These Terms.

- 17.2 Nothing in this Section 17 prevents Everfox from seeking or obtaining injunctive relief from a competent court in any jurisdiction.