

## EVERPROOF TERMS OF USE

Everproof provides the Everproof Application, an online qualification and credential management system. Users may access and use the Everproof Application by registering to use the Everproof Application as an individual user or when invited or requested to register by an organisation of whom they are, or may become, an employee, volunteer, agent, contractor, member or other representative.

This document along with any notices posted by Everproof on the Everproof Website from time to time sets out the terms and conditions which apply where a person registers to use the Everproof Application as a User and Everproof provides the Everproof Application Services to the User.

By accepting or otherwise confirming acceptance of these terms of use the User agrees that they have read, understood and will be bound by these terms of use.

### 1. Definitions and interpretation

#### 1.1 Definitions

In these terms of use, unless the context otherwise requires:

- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.
- (b) **Everproof** means Clasity Pty Ltd (ACN 168 177 259) of 10/28 Down Street, Collingwood, Victoria 3066.
- (c) **Everproof Application** means the qualification, credential and digital record creation, sharing, management, storage, verification and compliance software applications made available by Everproof to the User from time to time.
- (d) **Everproof Application Services** means the services described in clause 3.2.
- (e) **Everproof User Documentation** means any manuals, guides, reference materials or other similar documents in any form made available by Everproof to the User in connection with the Everproof Application.
- (f) **Everproof Systems** means the computer servers or other hardware or systems used by Everproof in connection with its provision of the Everproof Application Services.
- (g) **Everproof Website** means the website located at <https://everproof.com> or the website located at such other URL that Everproof notifies the User of from time to time.
- (h) **Commencement Date** means the date the User checks the 'I accept' box and submits an application for their Everproof Application account or otherwise confirms the User's acceptance of these terms of use electronically.
- (i) **Confidential Information** means any information provided by a party to the other party (whether provided before or after the Commencement Date) in connection with the Everproof Application or the Everproof Application Services and in the case of Everproof, includes the Everproof User Documentation and any other information regarding the Everproof Application but does not include information which is in or becomes part of the public domain, other than through a breach of these terms of use or of an obligation of confidence, or information which a party proves was independently acquired or developed without breaching any of the obligations set out in these terms of use.
- (j) **Consequential Loss** means:
  - (i) all indirect and consequential Loss;
  - (ii) all Loss beyond the normal measure of damages; and
  - (iii) all Loss of revenue, Loss of data, Loss of reputation, Loss of profits, Loss of actual or anticipated savings, Loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties, Loss of use, cost of capital or costs of substitute goods, facilities or services.
- (k) **Consumer** has the meaning given in section 3 of the Australian Consumer Law.
- (l) **Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

- (m) **Data** means all information, images, Documents and other data (whether relating to the User or an Organisation) uploaded to the Everproof Application by or on behalf of the User or an Organisation.
- (n) **Documents** means any qualification, credentials, certificates, certification, record of compliance, record of training or achievement, record of inspection or examination, record of attendance, means of identification, assessment, licence, permit, approval, consent or other record or document about a person or an Organisation which is issued by a person, including an educational institution or Government Authority and, for the avoidance of doubt, includes (where relevant) criminal history record checks, working with children checks, passports, visas and immunisation records.
- (o) **Force Majeure Event** means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it, including war (declared or undeclared) civil commotion, military action, or an act of sabotage, strike, lockout or industrial action, storm, tempest, fire, flood, earthquake or other natural calamity or an ongoing internet or telecommunications outage or impairment.
- (p) **Government Authority** means any governmental, semi-governmental, municipal, statutory, judicial or quasi-judicial authority, department, agency, body, entity, organisation, commission or tribunal. It also includes any self-regulatory organisation established under statute and any securities exchange.
- (q) **Improvement** means any modification, alteration, development, new use or other change to the Everproof Application which makes it more accurate, more useful, more functional, more efficient, more cost effective or in any other way preferable.
- (r) **Intellectual Property** includes all patents, designs, copyright, trade marks or circuit layout rights and any right to apply for the registration or grant of any of the above.
- (s) **Loss** means any loss, liability, cost, claim, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and whether direct loss or Consequential Loss.
- (t) **Organisation** means any person who:
  - (i) has been granted access to the Everproof Application by Everproof; and
  - (ii) who the User has been linked to in the Everproof Application as a current or prospective employee, volunteer, agent, contractor, member or other representative.
- (u) **Password** means the username and password or other means of authentication which the User is required to provide in order to be able to access the Everproof Application.
- (v) **PDH Services** means services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (w) **User** means each person who registers to use the Everproof Application as an individual user.
- (x) **Term** means has the meaning given in clause 2.
- (y) **Third Party Application** means any product, service, system, application or internet site integrated or interfaced with the Everproof Application that is owned or operated by a Third Party Provider, and that is used by the User in connection with the Everproof Application.
- (z) **Third Party Provider** means any third party that provides support, technology and/or other products or services that are used by the User in connection with the Everproof Application.
- (aa) **Unacceptable Content** means any content which, in Everproof's reasonably held opinion, is obscene, offensive, upsetting, defamatory, illegal or inappropriate, infringes or appears to infringe the intellectual property rights of any person or contravenes or appears to contravene any applicable laws, regulations or codes of conduct (including any codes of conduct or policies of an Organisation).
- (bb) **User Content** means any and all content uploaded to the Everproof Application by or on behalf of the User, including any Data or Documentation uploaded to the Everproof Application by or on behalf of the User.

## 1.2 Interpretation

In these terms of use, headings are inserted for convenience only and do not affect the interpretation of these terms of use and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (d) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority or agency; and
- (e) no provision of these terms of use will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the terms of use or the inclusion of the provision in the terms of use.

## **2. Term**

Everproof's provision of the Everproof Application Services commences on the Commencement Date and will continue until terminated in accordance with clause 11.

## **3. Everproof Application Services**

### **3.1 Provision of Everproof Application Services**

During the Term Everproof will provide the Everproof Application Services to the User on the terms and conditions set out in these terms of use.

### **3.2 Everproof Application Services**

The Everproof Application Services will consist of Everproof:

- (a) providing the User with access to and use of the Everproof Application during the Term; and
- (b) providing the User with access to and use of the Everproof User Documentation during the Term.

## **4. Everproof Application**

### **4.1 Support services**

The User acknowledges and agrees that nothing in these terms of use imposes obligations on Everproof to provide any services to the User in respect of the Everproof Application other than the Everproof Application Services including (without limitation) technical support, training or maintenance services.

### **4.2 Everproof may vary**

Everproof may vary the features, functions and other benefits available to the User in respect of the Everproof Application and Everproof Application Services at any time and without any requirement to provide prior notice to the User.

### **4.3 Everproof retains discretion**

- (a) The User acknowledges and agrees that Everproof retains the sole discretion regarding the features, functions and other benefits of the Everproof Application and nothing in these terms of use requires Everproof to provide or maintain any features, functions or other benefits in respect of the Everproof Application.
- (b) The User also acknowledges and agrees that nothing in these terms of use limits Everproof's right to suspend, discontinue, alter or limit access to any such features, functions or other benefits from time to time.

## **5. Third Party Applications**

The User acknowledges that the Everproof Application may interact with Third Party Applications or require Third Party Applications or Third Party Providers be used to provide particular features or functionality. The User acknowledges that access to such Third Party Applications or services and any support for such Third Party Applications or services may need to be obtained directly from the relevant Third Party Provider at the User's cost. Everproof does not make any representations or warranties regarding any such Third Party Applications or services and will not be responsible for any issues in respect of Third Party Applications or services or any Loss suffered by the User in connection with any Third Party Applications or services or the User's dealings with Third Party Providers.

## **6. Passwords**

- (a) The User will be responsible for setting the Passwords for their Everproof Application account.
- (b) The User must:
  - (i) ensure that Passwords set by the User complies with best practice regarding the strength and security of passwords;
  - (ii) ensure that each Password is securely maintained and used only by the User;
  - (iii) comply with any policies, guidelines or other requirements issued by Everproof from time to time in any way relating to Passwords;
  - (iv) immediately notify Everproof and take immediate steps to change their Password if their Password is lost, stolen, missing or is otherwise compromised or if Everproof recommends the Password be changed; or
  - (v) periodically reset Passwords as and to the extent required by Everproof from time to time.
- (c) Everproof reserves the right at any time and from time to time to change and/or revoke Passwords by providing the User with written notice.

## **7. User responsibilities and obligations**

### **7.1 User responsibilities**

The User will be responsible for:

- (a) the day to day use of the Everproof Application;
- (b) uploading all User Content to the Everproof Application;
- (c) obtaining all consents, authorisations, permits or approvals necessary:
  - (i) for Everproof and its personnel to access, use and disclose the User Content as contemplated in these terms of use;
  - (ii) for the User Content to be uploaded into the Everproof Application;
  - (iii) for the User Content to be stored on the Everproof Systems;
  - (iv) for Everproof to disclose the User Content to third parties as contemplated or permitted by these terms of use; and
  - (v) to otherwise access and use the Everproof Application as contemplated by these terms of use;
- (d) ensuring that it has all licences, certifications, authorisations, permissions or other approvals required to be able to access and use the Everproof Application;
- (e) ensuring all User Content is complete, current, accurate and not misleading and does not infringe the Intellectual Property rights of any person;
- (f) satisfying itself that the Everproof Application is compatible with its own hardware, software and internet and network capabilities and maintaining all hardware, software, Third Party Applications and other technology necessary to be able to access and use the Everproof Application;
- (g) ensuring that the use of the Everproof Application by the User and the uploading and storage of the User Content complies with all applicable laws, regulations or codes of conduct (including the *Privacy Act 1988* (Cth) and any other applicable privacy laws); and
- (h) ensuring that it maintains back up or alternate systems for use if the Everproof Application is unavailable or is otherwise unable to be used by the User.

### **7.2 User obligations**

The User must:

- (a) access and use the Everproof Application only for its own personal or internal business purposes in accordance with these terms of use;
- (b) only use and copy the Everproof User Documentation to the extent necessary to use the Everproof Application and receive the Everproof Application Services;

- (c) provide all co-operation, assistance, system access and other inputs or assistance reasonably requested by Everproof in relation to the provision of the Everproof Application Services;
- (d) comply with all policies regarding the use of the Everproof Application which Everproof notifies the User of from time to time (which notification may be provided by Everproof making the relevant policies accessible via the Everproof Website);
- (e) not use the Everproof Application in any way or for any purpose other than as permitted by these terms of use;
- (f) comply with the *Privacy Act 1988* (Cth) and any other privacy laws, regulations and codes when using the Everproof Application or doing anything permitted by, or in connection with, these terms of use;
- (g) not modify, adapt, translate, reverse engineer, de-compile, disassemble or copy all or any part of the Everproof Application;
- (h) not attempt to circumvent or break any encryption, decryption or other security device or technological protection measure contained in the Everproof Application;
- (i) not upload to the Everproof Application any viruses, bugs, worms, trojan horses, harmful codes or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the Everproof Application or the software or hardware of Everproof or any third party;
- (j) not distribute any part of the Everproof Application, Everproof User Documentation of Everproof Application Services for commercial purposes or otherwise sub-licence or resell the Everproof Application, Everproof User Documentation or Everproof Application Services;
- (k) not create derivative works from all or any part of the Everproof Application;
- (l) not transfer, assign, rent, lease, lend, sell or otherwise dispose of all or any part of the Everproof Application or any compilation derived from the Everproof Application;
- (m) not make any part of the Everproof Application publicly available;
- (n) not upload or post any Unacceptable Content to the Everproof Application or otherwise make Unacceptable Content accessible via the Everproof Application; and
- (o) not upload or post any Data or Documentation about any person (including the Organisation) other than the User, unless the User:
  - (i) is the parent or guardian of that person; or
  - (ii) has the express consent of that person to upload or post the Data or Documentation.

## **8. Data and User Content**

### **8.1 Accuracy, disclosure and verification of Data and User Content**

- (a) The User acknowledges and agrees that:
  - (i) Everproof may disclose, and the User consents to the disclosure of, User Content and other Data to:
    - (A) other persons who are granted access to the Everproof Application, including Organisations;
    - (B) Government Authorities or other third parties to seek to verify the accuracy of the relevant User Content or Data; and
    - (C) any person who the User, through the Everproof Application, consents to Everproof sharing the User Content or other Data with;
  - (ii) Everproof or an Organisation may, with the prior consent of the User, allow User Content and other Data to become publicly accessible (including through the publication of an internet link with no access restrictions);
  - (iii) the accuracy of any verification of User Content and other Data performed by Everproof using information available from any publicly available databases or systems (including databases or

systems made available by Government Authorities or other third parties) will be limited to the information contained in that database or system;

- (iv) if Everproof believes that any Data or other User Content is not accurate, current or complete then Everproof may, but is not required to, update or vary that Data or other User Content. The User acknowledges and agrees that Everproof is not liable for any loss or damage suffered by the User as a result of Everproof updating or varying Data or User Content under this clause 8.1(a);
  - (v) the requirements and conditions to be met for any User Content or Data (including any Documents) to be verified by Everproof or an Organisation will be determined by Everproof or the Organisation (as applicable) in its sole discretion, notwithstanding any requirements which may be provided for under any law or regulation;
  - (vi) Everproof does not control, is not responsible for and provides no warranty as to the availability, accuracy, currency or completeness of the User Content and other Data or any information or Documentation that uses or is derived from the User Content, other Data or content in databases or systems made available by Government Authorities or other third parties, and
  - (vii) the User must not make any claim against Everproof in respect of the User Content and other Data (including use of the User Content or other Data by an Organisation) or otherwise seek to hold Everproof responsible for the provision, content, accuracy or reliability of the User Content and other Data.
- (b) The User acknowledges and agrees that, for such period of time as the User is linked to an Organisation, that Organisation may be able to:
- (i) access, use and store the User Content and may retain copies of such User Content even after such time as the Organisation is linked to that User;
  - (ii) upload to the Everproof Application Data which is about, or otherwise linked to, the User;
  - (iii) issue a record of the Documents held by the User;
  - (iv) issue a record of the persons (which may include the User) who hold a specified Document;
  - (v) issue a record of the Documents held by the Organisation;
  - (vi) issue their own Documents to the User; and
  - (vii) specify compliance requirements which the Organisation requires the User to meet or achieve, such as the holding of specific Documents.
- (c) The User is responsible for:
- (i) verifying that any User Content and other Data which it is able to access via the Everproof Application is accurate, current and complete (including Data about the User which may be uploaded to the Everproof Application by an Organisation);
  - (ii) ensuring that any Data about the User which is accessible via the Everproof Application remains accurate, current and complete;
  - (iii) ensuring that any Data which is uploaded to the Everproof Application by or on behalf of the User is accurate, current and complete; and
  - (iv) its use of the User Content and other Data.

## **8.2 Back ups and archiving**

- (a) The User acknowledges that:
- (i) Everproof does not provide back up, archiving, record keeping or other similar services in respect of the User Content and other Data and the User is responsible for implementing and maintaining its own back up, archiving, record keeping and data retrieval procedures in respect of the User Content and other Data; and
  - (ii) Everproof shall not be held liable for any Loss which the User may suffer as a result of any User Content and other Data been deleted, destroyed or otherwise lost (including where such User Content and other Data is deleted by an Organisation).

- (b) Notwithstanding clause 8.2(a), the User acknowledges and agrees that, subject to any applicable laws which may require the return, deletion or destruction of the User Content and other Data:
  - (i) Everproof may, after the Term, keep and maintain copies of the User Content and other Data; and
  - (ii) an Organisation can (unless you have a different arrangement with the Organisation) keep and maintain copies of the User Content and other Data in respect of the User that the Organisation had access to as a result of the User being linked to that Organisation.

### **8.3 Availability of Data**

The User acknowledges that:

- (a) subject to any applicable laws, Everproof is under no obligation to delete, destroy or otherwise make unavailable any User Content or other Data including, without limitation, upon the termination of the provisions of the Everproof Application Services; and
- (b) Everproof may make available to an Organisation any User Content and other Data which is linked, about or otherwise connected to that Organisation even after the termination of the provision of the Everproof Application Services.

### **8.4 Privacy**

Everproof will collect, handle and store information (including User Content and any other Data) in accordance with the Everproof privacy policy (a copy of which can be found here: <https://everproof.com/docs/legal/privacy-policy.pdf>) and collection notice (a copy of which can be found here: <https://everproof.com/docs/legal/privacy-collection-notice.pdf>), or by requesting a copy from Everproof.

## **9. Everproof User Documentation**

The User must use only the most recent version of the Everproof User Documentation provided by Everproof, and must follow Everproof's instructions concerning the return or destruction of any superseded versions of the Everproof User Documentation.

## **10. Unacceptable Content**

### **10.1 Everproof can notify User**

If Everproof reasonably believes that any Unacceptable Content has been uploaded into the Everproof Application, is accessible using the Everproof Application or is being stored on the Everproof Infrastructure, Everproof may request the User either to remove the Unacceptable Content or disable access to the Unacceptable Content.

### **10.2 Everproof can take action**

Everproof will have the right (but not the obligation) to remove Unacceptable Content from the Everproof Application or Everproof Systems or disable access to Unacceptable Content where the User has not complied with a Everproof request under clause 10.1 within five days of the date of the request.

### **10.3 No obligation to monitor**

Nothing in these terms of use imposes obligations on Everproof to monitor the Everproof Application for Unacceptable Content or otherwise monitor or screen User Content (or any other Data) for Unacceptable Content.

## **11. Termination**

### **11.1 Suspension**

Everproof reserves the right to at any time (and without any obligation to provide prior notice to the User) suspend the User's access to the Everproof Application or any part of the Everproof Application.

### **11.2 Organisation's Account**

The User acknowledges and agrees that if the User is granted access to an Organisation's account in the Everproof Application, Everproof may at any time and for any reason suspend or terminate the User's access to the Organisation's account.

### **11.3 Termination without cause**

- (a) Either party may terminate Everproof's provision of the Everproof Application Services at any time and without cause by providing the other party with written notice of termination.
- (b) The Customer may provide written notice under this clause 11.3 by:
  - (i) sending notice by email to [support@everproof.com](mailto:support@everproof.com); or
  - (ii) clicking on the cancellation or other similar button (if any) located within the Everproof Application.

#### **11.4 Termination with cause**

- (a) Without limiting clause 11.3, Everproof may, by written notice to the User, terminate Everproof's provision of the Everproof Application Services with immediate effect:
  - (i) if the User fails to comply with any written notice issued by Everproof requiring the User to remedy a breach, non-observance or non-performance of the User's obligations under these terms of use within 7 days of receiving that notice from Everproof;
  - (ii) if the User commits a breach of these terms of use which Everproof considers is incapable of remedy; or
  - (iii) if the User uses the Everproof Application in any way which Everproof considers may damage the reputation, brand or goodwill of Everproof or the Everproof Application.
- (b) Without limiting clause 11.3, the User may, by written notice to Everproof, terminate Everproof's provision of the Everproof Application Services with immediate effect in accordance with clause 19.7.

#### **11.5 Consequences of termination**

Upon termination of Everproof's provision of the Everproof Application Services:

- (a) the User must immediately:
  - (i) cease using the Everproof Application; and
  - (ii) return to Everproof any Everproof User Documentation in the User's possession or control; and
- (b) Everproof ceases to have any obligations under these terms of use with respect to the provision of Everproof Application Services and may disconnect the User's access to the Everproof Application and disable all Passwords.

#### **11.6 Obligations continuing following termination**

The termination of these terms of use does not operate to terminate any rights or obligations under these terms of use that by their nature are intended to survive termination or expiration, including the parties' rights and obligations under clauses 1, 11.5, 11.6, 12, 13, 16, 17, 18 and 19, and those rights or obligations remain in full force and binding on the party concerned.

### **12. Confidentiality**

#### **12.1 Confidentiality obligations**

Where a party (**Recipient**) receives Confidential Information from the other party under these terms of use or otherwise in connection with the Everproof Application Services, the Recipient must:

- (a) keep the Confidential Information confidential;
- (b) subject to clause 12.2, not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of these terms of use; and
- (c) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

#### **12.2 Permitted disclosure**

Notwithstanding clause 12.1, the Recipient may use or disclose Confidential Information to the extent necessary to:

- (a) perform its obligations or exercise its rights under these terms of use (including, in the case of Everproof, for the purposes of providing the Everproof Application Services);
- (b) comply with any law, binding directive of a regulator or a court order;



- (c) comply with the listing rules of any securities exchange on which its securities are listed; or
- (d) obtain professional advice in relation to matters arising under or in connection with these terms of use.

### **12.3 Promotion and marketing**

The User agrees that, for the purposes of promoting and marketing Everproof and the Everproof Application, Everproof is entitled to:

- (a) notify others of Everproof's relationship with the User and Everproof's provision of the Everproof Application Services to the User; and
- (b) contact the User (including by email), including for the purpose of promoting the services of Everproof or the commercial partners of Everproof.

## **13. Intellectual Property**

### **13.1 Everproof's Intellectual Property**

- (a) The User acknowledges that nothing in these terms of use grants the User any ownership of or rights in respect of the Intellectual Property in the Everproof Application or any Everproof User Documentation, any Intellectual Property in any materials created as a result of the performance of the Everproof Application Services or any Intellectual Property in any Improvements to the Everproof Application or Everproof User Documentation created in connection with these terms of use.
- (b) Any Intellectual Property in respect of the Everproof Application or Everproof User Documentation (including any Improvements) which is created by or vests in the User during the Term is assigned to Everproof immediately upon the Intellectual Property being created or vesting in the User and the User agrees to do all things and execute all documents as is reasonably necessary to effect such assignment.
- (c) During the Term Everproof grants the User a limited, non exclusive and revocable licence to use the Intellectual Property referred to in clause 13.1(a) solely to the extent such use is necessary for the User to receive the Everproof Application Services. Unless revoked earlier by Everproof, the licence granted under this clause 13.1(a) terminates immediately upon the end of the Term.

### **13.2 User Intellectual Property**

- (a) Everproof acknowledges that, as between Everproof and the User, the User will retain ownership of its Intellectual Property in respect of the User Content.
- (b) The User grants Everproof a non-exclusive, irrevocable, royalty free licence to reproduce and otherwise exploit the User Content for the purposes of:
  - (i) providing the Everproof Application Services to the User; and
  - (ii) providing access and use of the Everproof Application to any Organisation,or for any purposes which Everproof considers are ancillary to its provision of the Everproof Application Services or Everproof Application or are otherwise necessary for the proper operation of the Everproof Application.

### **13.3 Trade marks**

Nothing in these terms of use grants the User any ownership of or rights to use the trade marks of Everproof and the User must not adopt, register or attempt to register or use any trade marks which are identical or deceptively similar to the trade marks owned by Everproof.

## **14. Security of Everproof Application**

### **14.1 Everproof's obligations**

Everproof will take all reasonable steps to ensure the security and safety of the User Content, Data and other information stored on the Everproof Systems, including by implementing and maintaining reasonable and current data protection and virus screening procedures and technologies.

### **14.2 Everproof's liability**

Provided Everproof complies with its obligations under clause 14.1, Everproof will not be liable for any Loss suffered by the User which arises out of or in connection with:

- (a) any computer viruses being transferred by or obtained as a result of the use of the Everproof Application;

- (b) any hacking into or other similar attacks on the Everproof Application or the Everproof Systems; or
- (c) any other data security issues in respect of the Everproof Application or the Everproof Systems.

### **14.3 Updates**

The User acknowledges and agrees that nothing in these terms of use imposes obligations on Everproof to develop, release or install for the User any updates, upgrades, patches, bug fixes, new releases or new versions in respect of the Everproof Application (**Updates**), provided however that if Everproof does develop or release any Updates, it may require that all such Updates be used by the User.

### **15. Personnel and subcontractors**

- (a) Everproof reserves the right to determine which of its employees, agents, contractors or other representatives will be assigned to perform the Everproof Application Services and to replace or reassign those personnel during the Term.
- (b) The User agrees and acknowledges that Everproof may subcontract the performance of any of its obligations or the exercise of any of its rights under these terms of use (including obligations to provide the Everproof Application Services) to any sub-contractor without the User's consent and on such terms and conditions as Everproof deems fit from time to time.

### **16. Warranties**

Subject to clauses 17.1 and 17.2 Everproof does not warrant or guarantee that:

- (a) the Everproof Application will be compatible with, or capable of being used on or in connection with the User's computer and communications systems;
- (b) the User's access to the Everproof Application will be uninterrupted or error free;
- (c) the Everproof Application and User Content or other Data will be accurate, reliable or fit for any particular purpose; or
- (d) the User will derive any particular benefits from the provision of the Everproof Application Services.

### **17. Liability**

#### **17.1 Australian Consumer Law**

If the User is a Consumer and Everproof supplies PDH Services to the User, Everproof acknowledges that the User may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Services supplied by Everproof and nothing in these terms of use should be interpreted as attempting to exclude, restrict or modify the application of any such rights.

#### **17.2 Non PDH Services**

If the User acquires the Everproof Application Services from Everproof as a Consumer and the relevant Everproof Application Services are non PDH Services, then Everproof's liability to the User in connection with any breach of the Consumer Guarantees in respect of those Everproof Application Services is, at Everproof's option, to:

- (a) the supplying of the relevant services again; or
- (b) the payment of the cost of having the relevant services supplied again.

#### **17.3 Liability capped**

Subject to clauses 17.1, 17.2 and 17.5 and notwithstanding any other provision of these terms of use, the maximum aggregate liability of Everproof for any Loss or claim, however caused or arising, suffered by the User in connection with these terms of use and the supply of the Everproof Application Services is limited to the amount of AUD \$1000. The limitation set out in this clause 17.3 is an aggregate limit for all claims or Loss, whenever made.

#### **17.4 Commencement of claims**

Any claim by the User against Everproof for Loss however caused or suffered by the User in connection with these terms of use and the supply of the Everproof Application Services must be made within one year of the User becoming entitled to make the claim and any claim not made within this period is absolutely barred.

#### **17.5 Consequential Loss**

Neither party will be liable for any Consequential Loss (however caused) suffered or incurred by the other party in connection with these terms of use and the supply of the Everproof Application Services. This clause applies even if the party knew or ought to have known that the relevant Consequential Loss would be suffered.

## **18. Indemnity**

The User must indemnify and keep Everproof indemnified against any Loss which arises directly or indirectly out of:

- (a) any breach of these terms of use by the User including any breach in respect of which Everproof exercises a right to terminate;
- (b) the User in any way accessing or using the Everproof Application;
- (c) any Unacceptable Content being uploaded into the Everproof Application, stored on the Everproof Systems or accessible using the Everproof Application;
- (d) any failure by the User to obtain any consent, authorisation, permit or approval required for Everproof to provide the Everproof Application Services, including rights to use the Everproof Application, User Content or any other Data;
- (e) the uploading of the User Content and any other Data into the Everproof Application, storage of any User Content and any other Data on the Everproof Systems or use of the Everproof Application by the User or its Authorised Users which does not comply with privacy or other laws of any applicable jurisdiction;
- (f) the User Content and any other Data being stored or displayed on the Everproof Application;
- (g) the User infringing the Intellectual Property of a third party (including any Organisation); or
- (h) any negligent or unlawful acts of the User,

except to the extent the relevant Loss arises as a direct result of any breach of these terms of use by Everproof or any negligent or unlawful act of Everproof or any of its personnel.

## **19. General provisions**

### **19.1 Governing law**

These terms of use will be governed by and construed exclusively under the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of courts of that jurisdiction.

### **19.2 Assignment**

The User may not assign or otherwise deal with any of its rights or obligations under these terms of use without the prior written consent of Everproof. Everproof may assign, novate or otherwise deal with its rights under these terms of use at any time effective immediately upon Everproof notifying the User of the assignment or novation.

### **19.3 Entire agreement**

These terms of use and any notices posted by Everproof on the Everproof Website from time to time constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

### **19.4 Relationship between parties**

These terms of use do not create a relationship of employment, agency, partnership or joint venture between the parties.

### **19.5 Force Majeure**

- (a) If a party is prevented, hindered or delayed from performing its obligations under these terms of use by a Force Majeure Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly.
- (b) If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end.

#### **19.6 Waiver**

No failure to exercise or delay in exercising any right given by or under these terms of use to a party constitutes a waiver and the party may still exercise that right in the future.

#### **19.7 Variation**

- (a) Everproof may vary these terms of use by providing written notice to the User of the variation and such variation shall become effective from the date upon which the User agrees to the variation.
- (b) The User acknowledges and agrees that:
  - (i) until the User confirms that it agrees to the variation, Everproof may suspend the provision of Everproof Application Services to the User and/or may suspend the Users access to the Everproof Application; and
  - (ii) if the User does not agree to a variation, it can terminate this Agreement by providing notice under clause 11.3.

#### **19.8 Notices**

Except as expressly provided otherwise in these terms of use, any notice, consent, approval, waiver or other communication in connection with these terms of use may be given by a party by electronic communication to any email address provided by the other party. Such messages will be deemed to be received one hour after the electronic communication is recorded as being sent by the device from which the sender sent that electronic communication, unless the sender knows or could reasonably be expected to know that an electronic communication system has failed and as a result, the electronic communication was not received.

#### **19.9 Severability**

If any provision of these terms of use is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms of use or affecting the validity or enforceability of that provision in any other jurisdiction.