

## EVERSTREAM FIBER BUSINESS ESSENTIALS COMMERCIAL TERMS AND CONDITIONS OF SERVICE

THESE EVERSTREAM FIBER BUSINESS ESSENTIALS COMMERCIAL TERMS AND CONDITIONS OF SERVICE (the “Terms and Conditions”) and any associated Service Order are effective as of the Effective Date as defined below, by and between EVERSTREAM SOLUTIONS LLC, on behalf of itself and its affiliate Everstream GLC Holding Company LLC (collectively, “Everstream”), and the customer identified on a work order for installation of Everstream Equipment, and/or a Service Order or other document which operates as a request for use, intent to use, or acknowledgment of use of the Everstream Fiber Business Essentials Services provided by Everstream under these Terms and Conditions (the “Subscriber”). Everstream and Subscriber may each be herein referred to individually as a “Party” and collectively as the “Parties.” The Parties acknowledge and agree that there may now, or at some later time be, certain attachments hereto (“Attachment(s)”), which will or may become incorporated herein by reference, and that such Attachments may further describe certain services provided by Everstream to Subscriber (each a “Service” and collectively the “Services”) and set forth additional terms and conditions for the Service(s) not herein located but nonetheless incorporated hereto. Unless specifically set forth in any Attachment, capitalized terms shall have the meanings set forth in these Terms of Service, the Service Order(s), and/or other document(s) which operates as a request for use, intent to use, or acknowledgment of use of the Service(s).

1. **TERM OF SERVICES.** A Service Order will be effective upon the earlier to occur of (a) the last date of the signatures of the Parties to any Service order or work order for installation of Everstream Equipment; or (b) Everstream’s commencement of performance; Subscriber’s use of the Services (the “Effective Date”). The Service Order and related Service Order(s) shall remain in full force and effect until the proper termination of the final existing Service Order entered into under these Terms and Conditions (the “Term”).
2. **SERVICES.**
  - a. Subscriber acknowledges that Everstream offers the following specific Services:
    - i. **Voice Services**, more particularly described in **Article 22**;
    - ii. **Internet Services**, more particularly described in **Article 23**; and
    - iii. **Managed Services**, more particularly described in **Article 24**.
  - b. If Subscriber desires to receive one or more Service from Everstream under these Terms and Conditions, Subscriber must make the request by submitting Service Orders in a manner required by Everstream or as otherwise herein described. All submitted Service Orders are subject to approval and acceptance by Everstream. Upon Everstream’s acceptance of a Service Order, as indicated by: (a) Everstream’s written acceptance, (b) Everstream’s delivery of the Services, or (c) commencement of installation, such Service Order will be incorporated into these Terms and Conditions. Everstream shall provide the Services to Subscriber at the Service address(es) specified by Subscriber in the applicable Service Order (“Service Location(s)").
  - c. **SERVICE REQUEST EMAIL.** If using electronic mail (“Email”) to place an order to the Service(s), Subscriber agrees that such Email address will originate from Subscriber’s owner, employee, agent, or other representative that has full power and authority to place such order(s).
3. **ORDER TERM.** The “Initial Order Term” is the time period starting on the date the Services are functional in all material respects and available for use (the “Billing Start Date”) and will be confirmed by a Firm Order Commitment (“FOC”) between the Parties, which date may be more particularly described within the Service Order. The Initial Order Term shall continue for the period of time specified in the relevant Service Order(s). If no Initial Order Term is specified in a Service Order, the Initial Order Term is thirty-six (36) months from the Billing Start Date. Upon expiration of the Initial Order Term, the applicable Service Order shall automatically renew on a month-to-month basis (each a “Renewal Order Term”), The Initial Order Term and Renewal Order Terms are collectively herein described as the “Order Term” and remain subject these Terms and Conditions, unless either Party elects to Terminate the Service(s) under the Service Order(s) by providing the other Party at least thirty (30) days’ written notice in advance of the expiration of an Order Term.
4. **AVAILABILITY OF FACILITIES.** Subscriber acknowledges and understands (i) that certain Services, or certain features of certain Services, may not be available in all Service Locations, and may change from time to time, and (ii) that Everstream may decline to provide any requested Service at its sole discretion notwithstanding its ability to provide in that Service Location. Everstream’s

ability to provide Services to Service Locations depends upon its ability to secure and retain, without additional expense, suitable facilities, third party connections, and rights to construct and maintain necessary facilities such as pole attachments and conduits. If Everstream is unable to secure and/or retain such necessities, Everstream may immediately decline to accept or cancel a Service Order. The Parties acknowledge and agree that Everstream may act as Subscriber's agent to order access connection facilities provided by other providers or entities to allow the Service Location to connect to the Network.

## **5. SERVICE LOCATION ACCESS AND INSTALLATION.**

- a. **ACCESS.** Everstream requires reasonable access to each Service Location at any time throughout the Term as necessary for Everstream to provide the Services and to review, install, inspect, maintain, repair, remove, or operate any Everstream-provided, fiber optic cable or other cabling, modems, gateways, routers, or wireless cards, or other equipment ("Everstream Equipment") used to provide the Services. If Subscriber owns or controls the Service Location(s), Subscriber hereby grants Everstream permission to enter the Service Location(s) in order for Everstream to fulfill its obligations and exercise its rights under these Terms and Conditions and the associated Service Order. If a Service Location is not owned or controlled by Subscriber, Subscriber will obtain, with Everstream's reasonable assistance, appropriate rights of entry and access. If such rights are not obtained by either Party, then Everstream may decline Subscriber's request for Services, or terminate or amend the affected Service Order with respect to the inaccessible Service Location without any liability to Subscriber.
- b. **INSTALLATION REVIEW.** Everstream may perform, either before or after acceptance of a Service Order, an installation review (which may include Subscriber's inside wiring) of each proposed Service Location prior to installation of the Services to determine the serviceability of such network location and/or the need to extend Everstream's facilities, electronics, or other Everstream Equipment (collectively, the "Network") to provide the Services at the Service Location.
- c. **SITE PREPARATION.** Subscriber shall be responsible for necessary preparations at the Service Location(s) for delivery and installation of the Everstream Equipment and the installation and ongoing provision of Services, including the relocation of Subscriber's equipment, furniture, and furnishings as are or may become necessary to access the Everstream Equipment or Services. In addition, Subscriber shall provide Everstream with floor space, rack space, and other space as needed, as well as inside wiring and clean power, as is reasonably necessary for the installation, operation, and delivery of Everstream Equipment and Services at the Service Location(s). Subscriber shall not charge Everstream, and shall ensure that Everstream does not incur, any fees or expenses whatsoever in connection with Subscriber's provision of space, power, inside wiring, or access as described herein, or otherwise in connection with Subscriber's performance of its obligations pursuant to this Section; and any such fees or expenses charged by any other third party customer or end user accessing or using the Services (the "End User") shall be borne solely by Subscriber. Any failure or refusal by Subscriber to be ready to receive the Services shall not release Subscriber from its obligation to pay Service Charges for any Services that would otherwise be available for Subscriber's use.
- d. **INSTALLATION.** Everstream will schedule one or more installation visit(s) at the Service Location(s). At Subscriber's request, Everstream may perform installation or maintenance on weekends or times other than during normal business hours; provided, however, that Subscriber may be assessed reasonable additional Service Charges based on Everstream's actual incurred labor, material or other costs for such non-routine installation or maintenance. Subscriber or its authorized representative may be present during installation. If Everstream is unable to install the Service as a result of (i) Subscriber's (or any End User's) failure to deliver any required materials, or provide necessary support or information to Everstream; (ii) Subscriber's (or any End User's) failure to provide access to a Service Location; (iii) Everstream's inability to obtain access to equipment at the Service Location as necessary for installation of the Service, or (iv) Subscriber's Equipment (as defined herein) being inadequate to interconnect with the Services, then Subscriber shall pay Everstream a Service Charge at Everstream's then prevailing rates for any installation trip made by Everstream and for each subsequent installation trip necessary. In addition, if Everstream's installation of the Service is delayed as a result of Subscriber's actions or inactions as set forth above or if Subscriber is otherwise refusing or not ready to receive Services, then Everstream will notify Subscriber that Everstream is ready to finalize installation of the Services (the "Ready Notice") and may begin invoicing Service Charges as set forth in in these Terms and Conditions upon the earlier of the Billing Start Date or thirty (30) days after the date of the FOC.
- e. **SERVICE ORDER REVISIONS AND CANCELLATIONS.** If, either before or after a Service Order is executed, or during the course of the Order Term, Everstream determines that: (i) there is a lack of available service, facilities, or other items as detailed in these Terms and Conditions, or the criteria herein outlined are not met; (ii) additional work is necessary to enable Everstream to deliver the Services to the Service Location; (iii) access, transmission medium, equipment, adequate transmission capacity,

or services from or interconnection with the services or facilities of other providers, would require an additional cost or are unavailable; (iv) Subscriber's inside wiring is causing signal leakage which violates the Federal Communications Commission's ("FCC's") guidelines; or (v) there is any other cause beyond Everstream's control that causes an adverse effect on Everstream's ability to provide the Service, then Everstream may, at Everstream's sole discretion, either decline to accept or cancel a Service Order. Alternatively, Everstream will notify Subscriber of any additional Service Charges in excess of the amounts previously specified in a quote or Service Order. If Everstream notifies Subscriber that additional Service Charges will apply and Subscriber does not agree to pay such Service Charges by executing a revised Service Order within five (5) business days of receiving the same, either Party shall each have the right to cancel the applicable Service or, if no Service Order has been executed, Everstream shall have the right to decline to accept a pending Service Order.

## 6. EQUIPMENT.

- a. **EQUIPMENT RESPONSIBILITIES AND SAFEGUARDS.** Everstream shall use commercially reasonable efforts to maintain and secure the Everstream Equipment. Except as otherwise provided in these Terms and Conditions or any Service Order(s), Subscriber shall be responsible for the maintenance or repair of any cable, electronics, structures, equipment, or materials owned or provided by Subscriber. Subscriber shall not, and shall not cause any third party to, move, modify, disturb, alter, remove, relocate, or otherwise tamper with the Everstream Equipment to another location, install software on the Everstream Equipment which is not provided by Everstream, nor otherwise tamper with any portion of the Everstream Equipment without Everstream's prior written consent. Subscriber shall be responsible for loss or damage to the Everstream Equipment while at Subscriber's or an End User's facilities. Subscriber will also ensure that all Everstream Equipment at Subscriber's and End Users' Service Location(s) remains free and clear of all liens and encumbrances.
- b. **CUSTOMER SECURITY RESPONSIBILITIES.** Subscriber shall be responsible for all access to, and use of, the Service, including the responsibility whether Subscriber has knowledge of, or authorizes, such access or use. Subscriber shall be responsible for the implementation of reasonable security measures and procedures with respect to use of and access to the Service Location, Service, and Everstream Equipment. Subscriber shall secure and maintain any and all equipment owned or provided by Subscriber or End User (collectively, "Subscriber Equipment"), including, but not limited to, Private Branch Exchanges (including other non-Everstream switches, collectively, "PBXs"), where applicable, and any applications accessible through use of Subscriber Equipment, and shall be solely responsible for any conduct through and any charges incurred on Subscriber's Service account, regardless of whether such activity or charges are authorized by Subscriber or related to fraudulent activity until such time that Subscriber informs Everstream of fraudulent or unauthorized access. Without limiting Subscriber's responsibilities, Everstream has the right to implement reasonable measures to track, manage, and secure the connection between any Subscriber Equipment or applications used by Subscriber, End Users, or any third party who accesses the Subscriber Equipment and the Everstream Network, including without limitation authentication or other security access procedures. Everstream may immediately suspend the Service if Everstream discovers or becomes aware of any breach or compromise of the security of any Subscriber Equipment, Service, Service Location, Everstream Equipment, or connection to the Everstream Network; or otherwise terminate the Service under the terms of **Section 13(e)**.
- c. **EQUIPMENT RETURN, RETRIEVAL, REPAIR, AND REPLACEMENT.** Upon the termination of Services under Terms and Conditions and any Service Order(s) ("Termination") Subscriber will immediately return the Everstream Equipment to Everstream, or allow Everstream to retrieve the Everstream Equipment at Everstream's request and sole discretion, in the condition in which the Everstream Equipment was originally received by Subscriber, subject to ordinary wear and tear. If Everstream expressly provides written notice of its decision not to recover all or certain portions of Everstream Equipment, then such obligation to return or provide Everstream Equipment shall not be required.
- d. **FAILURE TO RETURN EVERSTREAM EQUIPMENT.** If Subscriber fails to return all Everstream Equipment or does not allow Everstream to retrieve all Everstream Equipment within ten (10) days after the Termination, Everstream may, at its discretion charge Subscriber an amount equal to: (i) Everstream's then-applicable unreturned equipment charge, or the retail cost of replacement of the unreturned Everstream Equipment; plus (ii) any and all costs and expenses incurred by Everstream in obtaining or attempting to regain possession of the Everstream Equipment. If applicable, Subscriber will pay for the repair or replacement of any damaged Everstream Equipment, except such repairs or replacements which are due to normal and ordinary wear and tear. The proper disposition of any Everstream Equipment that is not returned to, or recovered by, Everstream will be the sole responsibility of Subscriber, and must be in accordance with applicable laws. The foregoing Subscriber obligations will survive the termination of Service.

7. **STANDARD PAYMENT TERMS.** Subscriber shall pay recurring and non-recurring charges, taxes, and fees for the Services in the amount specified on the Service Order and other applicable charges related to the Service Order(s) and as described in these Terms and Conditions (collectively, “Service Charges”).
- a. **CHARGES.** Everstream invoices for monthly recurring charges specific to the Service(s) (“MRCs”), plus applicable taxes, fees, and surcharges, in advance on a monthly basis. Everstream invoices for one-time non-recurring charges for reimbursement of certain costs which may be related to construction and/or installation of Everstream Equipment or other initial actions required to provide the Service(s) (“NRCs”) after the Billing Start Date or as otherwise specified in the Service Order. All other charges, including but not limited to usage-based charges (e.g., phone usage, pay-per-view charges), will be invoiced in arrears on a monthly basis. Subscriber acknowledges and agrees that any and all Service Charges are payable to Everstream by way of Automated Clearing House (“ACH”) or wire transfer, within twenty (20) days after the date appearing on the invoice. Any payments made to Everstream by way of credit cards will be subject to a three percent (3%) service fee. In the event that Subscriber requires additional payment options, Subscriber may call Everstream’s customer care department at [\(866\) 624-8624](tel:8666248624) for assistance and direction. If Everstream fails to present a Service Charge in a timely manner, such failure shall not constitute a waiver of the charges for the Services to which it relates, and Subscriber will be responsible for, and pay, such Service Charges when invoiced in accordance with these payment terms. Everstream shall have the right to increase MRCs for each Service after the Initial Order Term upon thirty (30) days’ notice to Subscriber.
  - b. **TAXES, SURCHARGES, AND FEES.** Subscriber shall pay all applicable taxes, fees, or surcharges imposed on or in connection with the Services under the applicable Service Order(s) including but not limited to applicable federal, state, and local sales, use, excise, telecommunications, or other taxes, franchise fees, federal and state universal service fund fees, and other state or local governmental charges or regulatory fees, excluding income taxes measured on Everstream’s net income. If a Subscriber chooses to claim tax-exempt status, then Subscriber must supply Everstream with a copy of Subscriber’s tax exemption certificate or other documentation supporting Subscriber’s certification of its entitlement to such exempt status within fifteen (15) days of installation of applicable Services. If Subscriber supplies such documentation after that time, Everstream will apply it to Subscriber’s account on a prospective basis, allowing Everstream at least thirty (30) days for processing. To the extent such documentation is held invalid for any reason, Subscriber agrees to pay or reimburse Everstream for any tax or fee not collected or liability incurred, including without limitation related interest and penalties arising from Everstream’s reliance on such invalid certificate or documentation. Subscriber hereby consents that Everstream may disclose such written documentation, which may include a tax exemption form, to any governmental authority. Tax-exempt status shall not relieve Subscriber of its obligation to pay applicable franchise fees or other non-tax fees and surcharges since the application of such fees and surcharges may not be governed by the tax standing of Subscriber. Everstream reserves the right, from time to time, to change the surcharges for Services under these Terms and Conditions to reflect incurred costs, charges, or obligations imposed on Everstream to the extent permitted, required, or otherwise not prohibited under applicable law (e.g., universal service fund charges). Furthermore, Everstream shall have the right to collect or recover from Subscriber the amount of any state or local fees or taxes arising as a result of the Service Order under these Terms and Conditions, which are imposed on Everstream or its services, or otherwise assessed or calculated based on Everstream’s receipts from Subscriber that Everstream is entitled under applicable law to pass through to or otherwise charge Subscriber for Subscriber’s use or receipt of the Services. Such fees or taxes shall be invoiced to Subscriber in the form of a surcharge included on Subscriber’s invoice. To the extent that a dispute arises under these Terms and Conditions as to which a Party is liable for fees or taxes, Subscriber will bear the burden of proof in showing that the fee or tax is imposed upon Everstream’s net income. This burden may be satisfied by Subscriber producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on Everstream’s net income. Subscriber acknowledges that currently, and from time to time, there is uncertainty about the taxability or regulatory classification of some of the Services Everstream provides and, consequently, uncertainty about what fees, taxes and surcharges are due to or from Everstream or from its customers. Subscriber agrees that Everstream has the right to determine, in its sole discretion, what fees, taxes, and surcharges are due and to collect and remit them to the relevant governmental authorities, or to pay and pass them through to Subscriber. Subscriber hereby waives any claims it may have regarding Everstream’s collection or remittance of such fees, taxes, and surcharges.
  - c. **CHANGE REQUESTS.** Any charges associated with a Service, Everstream Equipment, or Subscriber Equipment installations, changes, or additions requested by Subscriber subsequent to executing a Service Order for the applicable Service Location are the sole financial responsibility of Subscriber. Everstream shall notify Subscriber of any additional NRCs and/or adjustments to MRCs associated with or applicable to such Subscriber change requests prior to making any such change. Subscriber’s failure to accept such additional charges within five (5) business days of receiving such notice will be deemed a

rejection by Subscriber, and Everstream shall not be required to perform any work giving rise to such charges. For accepted charges, Subscriber shall be assessed such additional NRCs and/or adjustments of the MRCs either (i) in advance of implementation of the change request or (ii) beginning on Subscriber's next and/or subsequent invoice(s).

- d. **SITE VISITS AND REPAIRS.** If Everstream visits a Service Location to either inspect the Services or respond to a service request, and Everstream reasonably determines that the cause of the service issue is not due to a problem arising from the Network or Everstream Equipment, but rather is due to (i) Subscriber misuse, abuse, or modification of the Services, Subscriber Equipment or facilities, or (ii) similar acts by a third party not under Everstream's control or direction, then Everstream may invoice Subscriber at Everstream's then-prevailing commercial rates for an on-site visit, plus any charges for Everstream Equipment repair or replacement as a result of Subscriber or third party damage that may be necessary.
  - e. **INVOICING DISPUTES; LATE AND COLLECTION FEES.** Subscriber must provide notice to Everstream of any disputed charges within sixty (60) days of the invoice date on which the disputed charges appear for Subscriber to receive any credit that may be due. Subscriber must present a reasonable basis for disputing any amount charged. Undisputed amounts not paid within (30) days of the invoice date shall be past due and subject to a late fee up to the lesser of 1.5% of the MRC per month or the maximum amount permitted by law. If Services are suspended due to late payment, Everstream may require that Subscriber pay all past due charges, a reconnect fee, and one or more MRCs in advance before reconnecting Services. Everstream may charge a reasonable service fee for all returned checks and bankcard, credit card or other charge card charge-backs. Subscriber shall be responsible for all expenses, including reasonable attorney's fees and collection costs, incurred by Everstream in collecting any unpaid amounts due under these Terms and Conditions. In the event that any dispute is subsequently found to be invalid, then any amount(s) withheld by Subscriber due to the dispute(s) will be paid at any time which is not later than that payment due date of the next subsequent invoice, such amount(s) to be subject to late fees herein referenced and described.
  - f. **CREDIT VERIFICATION.** If, at any time, Everstream has a concern about Subscriber's financial security or timeliness of payments, or matters related to network security or fraud, Everstream shall have the right to verify Subscriber's credit standing at any time, and may, at its election, and upon five (5) business days' notice, either suspend or terminate the Service Order and the Services provided hereunder upon thirty (30) days' notice if such verification provides cause to do so.
  - g. **BUNDLED PRICING.** If Subscriber has selected a bundled offer, meaning a discounted MRC for receiving more than one Service ("Bundle"), then the following conditions shall apply:
    - i. In consideration for Subscriber's purchase of all Services in the Bundle, and only with respect to that period of time during which Subscriber continues to purchase the specific Services in such Bundle and during which such Bundle is in effect, the correlating discount to the Services in such Bundle, ordered pursuant to the Everstream program governing such Bundle, will be reflected in the MRC for the respective Services.
    - ii. Upon Termination by Subscriber, for any reason other than a Everstream Default, of any Service component of the applicable Bundle, the pricing for the remaining Service(s) shall revert to Everstream's unbundled pricing for such Service(s) in effect at the time of Termination. Termination liability applicable to the Services under these Terms and Conditions shall otherwise remain unchanged.
- 8. ADMINISTRATIVE WEB SITE.** Everstream may, at its sole option, make one or more administrative web sites, including without limitation [www.Everstream.net](http://www.Everstream.net), available to Subscriber in connection with Subscriber's use of the Services (each an "Administrative Web Site"). Everstream may furnish Subscriber with one or more user identifications and/or passwords for use on an Administrative Web Site and Subscriber must immediately change any Everstream-provided user identifications and passwords to a secure, Subscriber-designated user identification and password. Subscriber shall be responsible for the confidentiality and use of such user identifications and passwords, whether provided by Everstream or designated by Subscriber, and any equipment or devices used to access any Administrative Web Site, and shall immediately notify Everstream if there has been an unauthorized release, use, or other compromise of any user identification or password. In addition, Subscriber agrees that it will cause its authorized users to keep confidential and not distribute any information or other materials made available by the Administrative Web Site. Subscriber is solely responsible for all its use of the Administrative Web Site. Everstream shall not be liable for any loss, cost, expense, or other liability arising out of any Subscriber use of the Administrative Web Site. Everstream may change or discontinue the Administrative Web Site, or Subscriber's right to use the Administrative Web Site, at any time. Any additional terms and conditions applicable to Subscriber's use of the Administrative Web Site will be posted on the site.

**9. SUPPORT.** Everstream will provide Network Operations Center (“NOC”) support for the Services under the Terms and Conditions during the hours of 8:00 AM – 5:00 PM Eastern Time, Monday through Friday (the “Business Hours”). Subscriber acknowledges that response times may vary on certain federally recognized holidays. Everstream shall provide contact information for inquiries and remote problem support for the Services. Everstream will provide Subscriber access to open a support request ticket outside the Business Hours so that such support may be provided during the following Business Hours. All such Subscriber support shall be provided only to Subscriber’s designated personnel or as mutually agreed upon by Everstream and Subscriber. Subscriber is responsible for all communications and support for its End Users. Subscriber shall provide routine operational support for the Everstream Equipment located at a Service Location, including without limitation, by performing reboots as requested by Everstream. Subscriber hereby acknowledges that at times, Everstream’s NOC receives a high volume of support requests and Subscriber understands and agrees that if Everstream’s NOC receives support requests from Subscriber which exceeds a frequency five (5) requests within any consecutive thirty (30) day period, and such requests are unrelated to the performance of Everstream’s Network and/or provision of the Service(s), then Everstream has the right to, and may at its sole discretion, suspend or terminate the Service(s) upon thirty (30) days’ notice. Subscriber is responsible for the installation, repair, and use of Subscriber Equipment, including without limitation, Subscriber-supplied third-party hardware, or software for the use of any Service or third party services. Everstream does not support third-party hardware or software used in conjunction with third-party services or supplied by Subscriber. Any questions concerning third-party hardware or software should be directed to the provider of that product. Everstream assumes no liability or responsibility for the installation, maintenance, compatibility, or performance of third-party software, or any Subscriber Equipment or Subscriber-supplied software with the Services. If such third-party equipment or software impairs the Services, Subscriber shall continue to pay all applicable Service Charges. If, at Subscriber’s request, Everstream should attempt to resolve difficulties caused by such third-party equipment or software, such attempt(s) shall be Everstream’s discretion and subject to Service Charges as set forth in in these Terms and Conditions.

**10. CUSTOMER REPRESENTATIONS AND OBLIGATIONS.**

- a. **REPRESENTATIONS.** Subscriber represents and warrants to Everstream that: (i) Subscriber has the authority to execute, deliver and carry out these Terms and Conditions, and (ii) its End Users and/or any other person or entity that accesses the Service(s) at the Service Location, will use the Service(s) and Network for Subscriber’s internal business purposes only and will comply with these Terms and Conditions.
  - b. **NO RESELLING.** Subscriber shall not re-sell or re-distribute (whether for a fee or otherwise) access to the Service(s) or system capacity, or any part thereof, in any manner other than for Subscriber’s internal business without the express prior written consent of Everstream, including without limitation, any use to provide services for the benefit of, or on behalf of, any third party other than Subscriber or its End Users.
  - c. **NO ILLEGAL PURPOSE OR UNAUTHORIZED ACCESS.** Subscriber shall not use, or permit End Users or third parties to use, the Service(s) and/or Everstream Equipment and Software, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material.
  - d. **NO INTERFERENCE.** Subscriber shall not interfere with or cause technical difficulties for other customers’ use of equipment or services; nor will Subscriber interfere with or disrupt the Everstream Network, backbone, nodes, other services, or third-party providers. Subscriber shall not install any equipment that interferes with the Services at the Service Location, including without limitation any antenna or signal amplification system.
  - e. **APPLICABLE LAWS.** With respect to Subscriber’s and/or End Users’ use of the Service (including the transmission or use of any content via the Service), Subscriber will comply, and ensure that its End Users comply, with all applicable laws and regulations in addition to these Terms and Conditions. Everstream shall have the right to audit Subscriber's use of the Service remotely or otherwise, to ensure compliance with the Terms and Conditions.
  - f. **ACCEPTABLE USE.** As between the Parties, Subscriber is solely responsible for (i) all use (whether or not authorized) of the Service by Subscriber, any End User, or any unauthorized person or entity, which use shall be deemed Subscriber’s use for purposes of these Terms and Conditions, (ii) all content that is viewed, stored or transmitted via the Service, as applicable, and (iii) all third-party charges incurred for merchandise and services accessed via the Service, if any.
- 11. PERFORMANCE.** Unless otherwise set forth in an Attachment, Services Order, or service level agreement, Everstream will use commercially reasonable efforts to provide the Services to Subscriber twenty-four (24) hours per day, seven (7) days per week. The Parties acknowledge however, that from time to time, there will be interruptions of the Service, whether due to maintenance, technical difficulties, or for other reasons beyond Everstream’s reasonable control. Temporary service interruptions or outages



for such reasons, as well as service interruptions or outages caused by Subscriber, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Everstream to perform its obligations under these Terms and Conditions.

**12. MONITORING, EQUIPMENT UPGRADES, AND NETWORK MODIFICATIONS.** Everstream has the right, but not the obligation, to upgrade, modify, and enhance the Everstream Network and the Service and take any action that Everstream deems appropriate to protect or improve the Service, the Everstream Equipment and facilities, and/or the Everstream Network. Everstream shall have the right, but not the obligation, to monitor, record, and maintain oral communications with Subscriber regarding Subscriber's account or Services for the purpose of service quality assurance, or as permitted under applicable law.

**13. DEFAULT, SUSPENSION OF SERVICE, AND TERMINATION.**

- a. **DEFAULT.** A Party shall be in default under these Terms and Conditions if it has failed to comply with any provisions herein contained, or those incorporated herein through a Service Order or other attachment or writing, including without limitation the obligation to pay any amounts due, and such Party fails to correct each such noncompliance within thirty (30) days of receipt of notice from the non-defaulting Party describing in reasonable detail the default or noncompliance ("Default").
- b. **MUTUAL TERMINATION RIGHTS.** Either Party may terminate these Terms and Conditions or a Service Order if: (i) the other Party is in Default; or (ii) the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debts, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange.
- c. **TERMINATION FOR CONVENIENCE BY CUSTOMER.** Notwithstanding any other term or provision in these Terms and Conditions, Subscriber may terminate a Service Order, or these Terms and Conditions, at any time upon thirty (30) days prior notice to Everstream, subject to payment of all outstanding amounts due, payment of any applicable Termination Charges (as defined below), and the return of any Everstream Equipment.
- d. **EVERSTREAM'S RIGHT TO SUSPEND.** Everstream shall have the right, at its option and sole discretion, without prior notice, and in addition to any other rights of Everstream expressly set forth in these Terms and Conditions and any other remedies it may have under applicable law, to suspend any Service(s), or any component thereof, if Subscriber fails to comply with any applicable laws or regulations or these Terms and Conditions, or if Subscribers' or its End Users' use of the Service is determined by Everstream, in its sole discretion, to result in a material degradation of the Everstream Network until Subscriber remedies any such noncompliance or degradation. No suspension shall affect Subscriber's on-going obligation to pay Everstream any amounts due under these Terms and Conditions. If Everstream suspends any Service, Everstream may require the payment of reconnect or other charges before restarting the suspended Service.
- e. **RIGHT TO TERMINATE CAUSED BY SECURITY ISSUES AND/OR FRAUD.** Notwithstanding any other term or provision in these Terms and Conditions, Subscriber acknowledges and agrees that if Everstream, in its sole discretion, determines that Subscriber's use of the Service(s) is related to (i) a significant security threat to the Everstream Network; (ii) fraud; or (iii) violation of the laws and/or regulations of any jurisdiction relevant to the Services and concern regardless of whether the Service Location is within such jurisdiction or whether caused by Subscriber or other third parties, then Everstream has the right to, and may, immediately terminate the Service(s) without notice, refund, or recourse. Termination under this Section shall not affect Subscriber's on-going obligation to pay Everstream any amounts due under the Service Order and these Terms and Conditions.
- f. **TERMINATION CHARGES.** Upon Termination, Subscriber must pay all Services Charges then due for Services provided through the then-current billing cycle. In addition, if Termination is due to Subscriber Default or for Subscriber's convenience, Subscriber must pay Everstream a termination charge equal to 100% of the unpaid balance of all Service Charges that would have been due throughout the applicable Order Term, including, without limitation, the outstanding balance of any and all unpaid NRCs (a "Termination Charge"). The Parties agree and acknowledge that the Termination Charge relates to liquidated damages and not as a penalty. The foregoing terms will also apply to any partial Termination impacting one or more Service Orders, but not the entire Terms and Conditions.
- g. **SURVIVAL.** The provisions of sections **6(c), 7(b), 7(e), 13(d), 13(e), 13(f), 14(a), 14(b), 15, 18, 19, 20, 21, 25,** and the Attachments shall survive the Termination.

**14. DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY.**

- a. **DISCLAIMER OF WARRANTY.** CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND EVERSTREAM EQUIPMENT, AND USES THE SAME AT ITS OWN RISK, AND FOR ACCESS TO AND SECURITY OF CUSTOMER'S EQUIPMENT AND CUSTOMER'S NETWORK. EVERSTREAM EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE APPLICATIONS OR CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE AND EVERSTREAM EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH APPLICATIONS OR CONTENT. AS SUCH, CUSTOMER ASSUMES TOTAL RESPONSIBILITY, AND EVERSTREAM ASSUMES NO RESPONSIBILITY, FOR VIOLATIONS AND/OR BREACHES OF FIREWALL SECURITY RULES BY CUSTOMER AND/OR ITS END USERS. EXCEPT AS SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS, THE SERVICE, EVERSTREAM EQUIPMENT, AND ANY EVERSTREAM MATERIALS ARE PROVIDED "AS IS, WITH ALL FAULTS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY EVERSTREAM, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. EVERSTREAM DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR WITHOUT LOSS OF CONTENT, DATA OR INFORMATION, OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. EXCEPT AS SET FORTH IN THE TERMS AND CONDITIONS, EVERSTREAM DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY EVERSTREAM WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH, OR THROUGHPUT RATE. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR ANY END USER'S EQUIPMENT OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR RESULTING FROM, CUSTOMER'S OR ANY END USER'S USE OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, VIA SENDING OR RECEIVING, UPLOADING OR DOWNLOADING, OR OTHER TRANSMISSION OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT EVERSTREAM'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THESE TERMS AND CONDITIONS, AND EVERSTREAM DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THESE TERMS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.
- b. **LIMITATION OF LIABILITY.** WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THESE TERMS AND CONDITIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER, ANY END USER, OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THESE TERMS AND CONDITIONS OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY, MISREPRESENTATION, OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY OF CUSTOMER'S PAYMENT OBLIGATIONS UNDER THESE TERMS AND CONDITIONS. EVERSTREAM'S MAXIMUM LIABILITY TO CUSTOMER WITH REGARD TO ANY SERVICE ORDER SHALL NOT EXCEED THE AMOUNT, EXCLUDING NRCS, PAID OR PAYABLE BY CUSTOMER TO EVERSTREAM FOR THE APPLICABLE SERVICE ORDER IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. EVERSTREAM SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH 911 OR ANY OTHER EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO CUSTOMER-PROVIDED EQUIPMENT, FACILITIES, OR SERVICES. EVERSTREAM SHALL NOT BE LIABLE FOR ANY DAMAGES TO CUSTOMER CAUSED BY VIOLATIONS AND/OR BREACHES OF FIREWALL SECURITY RULES BY CUSTOMER, ITS END USERS, AND/OR THIRD PARTIES.
- 15. INDEMNIFICATION.** Unless otherwise prohibited under applicable law, Subscriber at its own expense, shall indemnify, defend, and hold harmless Everstream, its affiliates, service providers, and suppliers, and their directors, employees, representatives, officers and agents (the "Indemnified Parties") against any and all third party claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by Indemnified Parties, including reasonable attorney and other professional fees and court costs incurred by Indemnified Parties, to the full extent that such arise from or relate to any one or more of the following:
- a. Subscriber's and/or its End Users' misuse of the Services;



- b. Subscriber's and/or its End Users' failure to comply with any applicable law, order, rule, regulation or ordinance or these Terms and Conditions; or
- c. Personal injury or tangible property damage caused by Subscriber's or its employees' or agents' or its End Users' negligence or willful misconduct.

Indemnified Parties shall have the right but not obligation to participate in the claim's defense, at the indemnified party's cost.

**16. COMPLIANCE WITH LAWS.** As between the Parties, Everstream shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Everstream's operation and provision of the Services as contemplated in the Terms and Conditions, and Subscriber shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Subscriber's use of the Services as contemplated in the Terms and Conditions. Unless specified otherwise in the Terms and Conditions, each Party shall give all notices, pay all fees and comply with all applicable laws, ordinances, rules and regulations relating to its performance obligations specified in the Terms and Conditions. These Terms and Conditions are subject to all applicable federal, state, or local laws and regulations in effect in the relevant jurisdiction(s) of the Service Location. If any provision of the Terms and Conditions contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of the Terms and Conditions. If the relevant law or regulation applies to some but not all of the Services being provided under the Terms and Conditions, then such law or regulation shall take priority over the relevant provision of the Terms and Conditions only for purposes of those Services to which the law or regulation applies. Except as otherwise explicitly stated in the Terms and Conditions, nothing contained herein shall constitute a waiver by Everstream of any rights under applicable laws or regulations pertaining to the installation, construction, operation, maintenance, or removal of the Services, facilities or equipment.

**17. REGULATORY CHANGES.** In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in any government- or quasi-government-imposed fees or charges that increases the costs or other terms of Everstream's delivery of Service to Subscriber, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used by Everstream in providing the Services, Subscriber acknowledges and agrees that Everstream may pass through to Subscriber any actual increase(s) of such fees or costs. Everstream shall use commercially reasonable efforts to notify Subscriber at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the Service Charges payable by Subscriber for the applicable Service, Subscriber may, within thirty (30) days after notification of such increase, terminate the affected Service without an obligation to pay Termination Charges, provided Subscriber notifies Everstream at least thirty (30) days in advance of Subscriber's requested termination date. Further, in the event that Everstream is required to file tariffs or rate schedules with a regulatory agency or otherwise publish or make generally available its rates in accordance with regulatory agency rules or policies respecting the delivery of the Services or any portion thereof, then the terms set forth in the applicable tariff or rate schedule shall govern Everstream's delivery of, and Subscriber's use or consumption of the Services. In addition, if Everstream determines that offering or providing the Services, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then Everstream may terminate the affected Service Order(s) without liability, by giving Subscriber thirty (30) days prior notice or any such notice as is required by law or regulation applicable to such determination.

**18. ARBITRATION.** These Terms and Conditions require the use of arbitration to resolve disputes and otherwise limits the remedies available to Subscriber in the event of a dispute. Subject to the "Exclusions" paragraph below, Everstream and Subscriber agree to arbitrate disputes and claims arising out of or relating to these Terms and Conditions, the Service(s), the Everstream Equipment, Network, violations and/or breaches in firewall rules, or marketing of the Services. Notwithstanding the foregoing, either Party may bring an individual action on any matter or subject in small claims court. The arbitrator of any dispute or claim brought under or in connection with these Terms and Conditions shall not have the power to award injunctive relief, which may only be sought in an appropriate court of law. No claim subject to arbitration under these Terms and Conditions may be combined with a claim subject to resolution before a court of law. THESE TERMS AND CONDITIONS MEMORIALIZE A TRANSACTION IN INTERSTATE COMMERCE. THE FEDERAL ARBITRATION ACT GOVERNS THE INTERPRETATION AND ENFORCEMENT OF THESE ARBITRATION PROVISIONS.

- a. A Party who intends to seek arbitration must first send to the other a written notice of intent to arbitrate, entitled "Notice of Intent to Arbitrate" ("Notice"). The Notice to Everstream should be addressed to: Attn: General Counsel, Everstream Solutions LLC, 1228 Euclid Avenue, Suite 250, Cleveland, OH 44115 ("Arbitration Notice Address"). The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought. If the Parties do not reach an agreement to resolve the claim within thirty (30) days after the Notice is received, Subscriber or Everstream may

commence an arbitration proceeding, in which all issues are for the arbitrator to decide (including the scope of the arbitration clause), but the arbitrator shall be bound by these Terms and Conditions. The arbitration shall be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by these Terms and Conditions, and the arbitration shall be administered by the AAA. The AAA Rules and fee information are available at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Arbitration Notice Address.

- b. IN THE EVENT THAT A DISPUTE IS ARBITRATED BETWEEN THE PARTIES AND A DECISION HAS BEEN REACHED BY THE ARBITRATOR, ANY PARTY THAT SUCCEEDS ON THE MERITS OF THE ARBITRATION SHALL HAVE THE BENEFIT OF HAVING ITS COST OF ANY ARBITRATION FILING FEES AND ARBITRATOR'S FEES BE BORNE BY THE OTHER PARTY, SUCH FEE TO INCLUDE BUT NOT BE LIMITED TO REASONABLE ATTORNEYS FEES OR EXPERT WITNESS COSTS UNLESS OTHERWISE REQUIRED UNDER APPLICABLE LAW. The appealing Party must provide the other Party with a copy of such appeal concurrently with its submission of the appeals notice to AAA. The three-arbitrator panel must issue its decision within one hundred twenty (120) days of the date of the appealing Party's notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which may exist under the Federal Arbitration Act. The Parties may agree that arbitration will be conducted solely on the basis of the documents submitted to the arbitrator, via a telephonic hearing, or by an in-person hearing as established by AAA rules. Unless Everstream and Subscriber agree otherwise in writing, all hearings conducted as part of the arbitration shall take place in the County of Cuyahoga, State of Ohio.
- c. CUSTOMER AGREES THAT, BY ENTERING INTO THESE A SERVICE ORDER UNDER THESE TERMS AND CONDITIONS, CUSTOMER AND EVERSTREAM ARE WAIVING THE RIGHT TO A TRIAL BY JUDGE OR JURY. CUSTOMER AND EVERSTREAM AGREE THAT CLAIMS MAY ONLY BE BROUGHT IN CUSTOMER'S INDIVIDUAL CAPACITY AND NOT ON BEHALF OF, OR AS PART OF, A CLASS ACTION OR REPRESENTATIVE PROCEEDING. Furthermore, unless both Subscriber and Everstream agree otherwise in writing, the arbitrator may not consolidate proceedings or more than one person's claims and may not otherwise preside over any form of representative or class proceeding.
- d. SEVERABILITY. If any clause within these arbitration provisions is found to be illegal or unenforceable, that specific clause will be severed from these arbitration provisions, and the remainder of the arbitration provisions will be given full force and effect. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN THE EVENT SOME OR ALL OF THESE ARBITRATION PROVISIONS IS DETERMINED TO BE UNENFORCEABLE FOR ANY REASON, OR IF A CLAIM IS BROUGHT THAT IS FOUND BY A COURT TO BE EXCLUDED FROM THE SCOPE OF THESE ARBITRATION PROVISIONS, BOTH PARTIES AGREE TO WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY TRIAL BY JURY. For purposes of the foregoing sentence only, in the event such waiver is found to be unenforceable, it shall be severed from these Terms and Conditions, rendered null and void and of no further effect without affecting the rest of the arbitration provisions set forth herein.
- e. EXCLUSIONS. CUSTOMER AND EVERSTREAM AGREE THAT THE FOLLOWING CLAIMS OR DISPUTES SHALL NOT BE SUBJECT TO ARBITRATION:
  - i. ANY INDIVIDUAL ACTION BROUGHT BY CUSTOMER OR BY EVERSTREAM ON ANY MATTER OR SUBJECT THAT IS WITHIN THE JURISDICTION OF A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS.
  - ii. ANY DISPUTE OVER THE VALIDITY OF ANY PARTY'S INTELLECTUAL PROPERTY RIGHTS.
  - iii. ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR RECEIPT OF SERVICE.

## **19. PROPRIETARY RIGHTS AND CONFIDENTIALITY.**

- a. EVERSTREAM'S PROPRIETARY RIGHTS. All materials including, but not limited to, any Everstream Equipment (including related firmware), software, data, and information provided by Everstream, any identifiers or passwords used to access the Service or otherwise provided by Everstream, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto, used by Everstream to provide the Service (collectively "Everstream Materials") shall remain the sole and exclusive property of Everstream or its suppliers and shall not become a fixture to the Service Location. Subscriber shall acquire no title to, or interest or right (including intellectual property rights) in, the Everstream Materials by virtue of the payments provided for herein other than the limited, non-exclusive, and non-transferable license to use the Everstream Materials solely for Subscriber's use of the Service. Subscriber may not disassemble, decompile, reverse engineer, reproduce, modify, or distribute the Everstream Materials, in whole or in part, or use them for the benefit of any third party. Subscriber shall not

cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Services. All rights in the Everstream Materials not expressly granted to Subscriber herein are reserved to Everstream or its suppliers. Subscriber shall not open, alter, misuse, tamper with, or remove the Everstream Equipment or Everstream Materials as and where installed by Everstream, and shall not remove any markings or labels from the Everstream Equipment or Everstream Materials indicating Everstream (or its suppliers) ownership or serial numbers.

- b. **CONFIDENTIALITY.** Subscriber agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the Everstream Materials and any other information and materials provided by Everstream in connection with these Terms and Conditions, including but not limited to the contents of these Terms and Conditions and any Service Orders. Subscriber will not issue a press release, public announcement, or other public statements regarding the Terms and Conditions and/or the Service Order without Everstream's prior consent.
  - c. **SOFTWARE.** If Software is provided to Subscriber hereunder, Everstream grants Subscriber a limited, non-exclusive, and non-transferable license to use such Software, in object code form only, for the sole and limited purpose of using the Services for Subscriber's internal business purposes during the Term. Subscriber shall not copy, reverse engineer, decompile, disassemble, translate, or attempt to learn the source code of any Software. Upon Termination, the license to use any Software provided by Everstream to Subscriber in connection with the Services provided under the Service Order shall terminate and Subscriber shall destroy any copies of the Software provided to Subscriber.
- 20. PRIVACY.** Everstream maintains a Privacy Policy that provides consumers with notice of Everstream's collection, use, maintenance, and disclosure of information, and their rights and choices with respect to such practices under applicable U.S. state and/or federal laws and regulations. The Privacy Policy may be found on Everstream's website at <https://www.everstream.net/privacy-policy/>. The Privacy Policy may be updated or modified from time-to-time by Everstream, with or without notice to Subscriber. Subscriber's privacy interests, including Subscriber's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act, the Federal Cable Communications Act, the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Subscriber proprietary network information and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in an Attachment, the Privacy Policy, and, if applicable, in Everstream's tariff, which are incorporated into, and made a part of, these Terms and Conditions by this reference. In addition to the foregoing, Subscriber hereby acknowledges and agrees that Everstream may disclose Subscriber's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers or any similar agency, or in accordance with the Privacy Policy or, if applicable, tariff(s). In addition, Everstream shall have the right (except where prohibited by law), but not the obligation, to disclose any information to protect its rights, property or operations, or where circumstances suggest that individual or public safety is in peril.

**21. NOTICES.**

- a. **NOTICES TO EVERSTREAM.** Except for notice to terminate a Service Order or to disconnect an Service as set forth in these Terms and Conditions, all other notices to be given under these Terms and Conditions to Everstream shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses:  
  
If to Everstream:  
Everstream Solutions LLC  
ATTN: General Counsel  
1228 Euclid Ave, Suite 250  
Cleveland, OH 44115
- b. **NOTICE TO CUSTOMER.** Notices to Subscriber shall be sent to the Subscriber billing address or as set forth in the Service Order. Each Party may change its respective address(es) for legal notice by providing notice to the other Party. Upon Everstream's request, Subscriber will also provide Everstream with a current email address that Subscriber regularly checks so that Everstream may provide copies of notices and other communications to Subscriber by email.
- c. **DISCONNECT NOTICE.** Subscriber may disconnect a Service or all Services under the Service Order by following the instructions available at this link: <https://enterprise.Everstream.com/support/faq/account/how-to-cancel-service.html> (such instructions in the link may be updated from time to time).

## 22. VOICE SERVICE(S).

- a. This **Article 22** will apply in the event that Subscriber intends to receive, or actually receives, any one (1) or more of the following Everstream-provided voice-related services under these Terms and Conditions (each referred to herein individually as a "Voice Service", and collectively the "Voice Services"):
  - i. In-Bound Toll-Free Service – provides Subscriber access to, and transportation and termination of, voice traffic over Everstream's voice network;
  - ii. Outbound Long Distance – provides Subscriber packetized interconnection for access to, and transportation and termination of, voice traffic;
  - iii. Session initiated protocol ("SIP") Trunking – provides Subscriber access to the public switched telephone network ("PSTN") for the placing and/or receiving of local and long distance calls with optional advanced features via dedicated internet connections; and/or
  - iv. Voice over internet protocol ("VoIP") Services to include hosted private branch eXchange ("Hosted PBX"), plain old telephone service ("POTS") and primary rate interface ("PRI") Services – VOIP Service provides Subscriber with access to voice conversations over a data network protocol via the internet protocol, whether through the residential internet or corporate intranet.
- b. **SPECIFIC VOICE SERVICES PROVIDED.** The Parties acknowledge that the specific Voice Service(s) provided by Everstream to Subscriber will be enumerated and described in the related Service Order. Any and all changes to the Voice Service(s) will be performed through the Service Order process.
- c. **DIRECTORY LISTING.** Subscriber represents that Subscriber's name, address, phone number and any other Subscriber-specific information cited in the Service Order(s) is correct, and Subscriber acknowledges that such information will be reflected in a Subscriber-specific white page directory listing. It shall be Subscriber's sole responsibility to inform Everstream in writing of any change in such information at least ninety (90) days prior to the local telephone directory issue date, which will be provided to the Subscriber upon request. Subscriber acknowledges that Everstream assumes no liability whatsoever for errors in the listing and Subscriber hereby releases Everstream from any claim of damage for any error in the directory listing.
- d. **PORTING OF TELEPHONE NUMBERS.** It shall be Subscriber's sole responsibility to provide Everstream with all telephone numbers that the Subscriber wants ported from their existing telecommunications carrier to Everstream. EVERSTREAM SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, AND DISCLAIMS ANY SUCH LIABILITY, FOR TELEPHONE NUMBERS THAT ARE NOT PORTED OVER TO EVERSTREAM AND WHICH ARE SUBSEQUENTLY DISCONNECTED BY CUSTOMER'S PREVIOUS CARRIER.
- e. **CUSTOMER EQUIPMENT.** Everstream is not responsible for any telephone system, computer, or network malfunctions and/or damage to Subscriber's hardware or software. If any of Subscriber's equipment requires modification or reprogramming to make it compatible with Everstream-provided service, Everstream shall not be liable for any applicable costs associated with modification or reprogramming charges.
- f. **CUSTOMER OBLIGATIONS TO TERMINATE SERVICES WITH EXISTING CARRIER.** It is Subscriber's sole responsibility to terminate any services with Subscriber's then-existing and/or previous telecommunications carrier which is current as of, or after, the Effective Date. In no event shall Everstream have any obligation to terminate such services on behalf of the Subscriber; nor shall Everstream be liable to Subscriber or any other person or entity as a result of such services not being terminated, or for any charges incurred for continued or overlapping billing periods for any services from the Subscriber's existing and/or previous carriers.
- g. **EVERSTREAM INTERNATIONAL LONG DISTANCE POLICY.** It is Everstream's policy to disable international calling services for, or not provide international calling services to, any and all customers that currently have no international call history. The Parties acknowledge that this policy is intended to prevent fraudulent calls billed against Everstream customers and as such is intended to protect each customer. If Subscriber opts for, and uses, the international call option, Everstream will require the completion and return of a release form in which Subscriber acknowledges that Subscriber is solely responsible for calls generated from the Subscriber network(s) and/or telephone system(s) that connect to the Everstream voice network. Subscriber hereby acknowledges that Everstream offers a no-cost account code feature that can be implemented to protect Subscriber's Voice Service(s) and such account code can be enabled and set as a requirement for (i) international long

distance calls only, (ii) domestic long distance calls only, or (iii) both. Everstream will not waive or credit charges for fraudulent long distance international charges.

- h. PROHIBITION OF RESALE. Subscriber shall not sell, resell, assign, license, or sublicense the Voice Service(s) or any component thereof, or use or offer the same on a service-bureau or time-sharing basis service resale. Subscriber hereby warrants and represents that Subscriber will not engage in service resale of the Voice Service(s).
- i. PROHIBITIONS ON AUTO-DIALING, TRUNKING, AND TRAFFIC PUMPING. Subscriber shall not (i) perform auto-dialing or “predictive dialing”, (ii) trunk or forward Subscriber’s Everstream phone or fax number to other numbers that handle multiple simultaneous calls or to a PBX or a key system, or (iii) traffic pump or access stimulation of calls through the Voice Service(s) or the Everstream Network.
- j. GENERAL VOICE SERVICES DISCLAIMER. Everstream and Subscriber acknowledge and agree that the request procedure described herein is not the usual ordinary procedure and also that EVERSTREAM IS NOT LIABLE FOR MISTAKES IN ANY ADDITIONAL VOICE SERVICE REQUEST(S) BY WAY OF E-MAIL IN THE EVENT THAT SUCH REQUEST(S) IS REASONABLY VAGUE OR AMBIGUOUS, AND THE SOLE REMEDY FOR SUCH MISTAKE(S) IS FOR EVERSTREAM TO CURE THE MISTAKE(S) WITHIN FIFTEEN (15) DAYS NOTICE BY CUSTOMER.
- k. 911 INTERCONNECTED EMERGENCY DISCLAIMER. The Parties Acknowledge that Everstream’s Voice Services provide access to the 911 emergency system. As a condition of the provision of one or a Voice Service that , Subscriber agrees to complete and return the 911 Interconnected Emergency VOIP Services Disclosure (the “911 Disclosure”).
- l. VOIP 911 VERSUS TRADITIONAL 911 SERVICE. The 911 VoIP service may differ from traditional 911 wireline voice emergency calls depending on the device used and location of each customer; the FCC requires Everstream to inform customers of the availability and possible limitations of the 911 VoIP service.
- m. FIXED PHYSICAL LOCATION. Subscriber shall provide Everstream with the physical location at which each VoIP service will be used so emergency services personnel may locate Subscriber in the event that Subscriber calls 911; however, Subscriber shall also be prepared to provide the physical location to a 911 service provider, if asked. Everstream’s VoIP service is intended to serve a fixed physical designated registered address (the “Registered Location”) and shall not move to serve other physical locations. 911 services will not function at a remote location or may transmit incorrect physical location information for the caller if the SIP/VoIP equipment is removed from the Registered Location. The Registered Location is used to determine the closest 911 service center when 911 is dialed and Subscriber shall contact Everstream’s office before moving or tampering with any related equipment/service. CUSTOMER SHALL NOT MOVE THE VOIP SERVICE WITHOUT HAVING FIRST DISCUSSED ALL OPTIONS AND ISSUES WITH EVERSTREAM AND RECEIVED EVERSTREAM’S CONFIRMATION THAT THE NEW PHYSICAL ADDRESS CAN BE UPDATED.
- n. VOIP E911 SERVICE CALLS MAY BE DELAYED OR DROPPED. Calling 911 with a VoIP service may be slower to connect than a traditional landline service and calls to the 911 service provider may be delayed or dropped due to network congestion or other network problems. Additionally, power outages and/or service outages may limit the use of the 911 service. Examples of service outages include, but are not limited to, internet connection failure, internet connection overload, internet service disconnection, port blocking, or any other type of service disruption or disconnection. CUSTOMER SHALL PROVIDE ADEQUATE BATTERY BACKUP FOR CUSTOMER’S ROUTER, SIP/VOIP DEVICE, AND TELEPHONE EQUIPMENT to ensure continued operation of Subscriber’s VoIP device in the event of a power failure. The 911 service will not be available if Subscriber’s connection is not operational or correctly configured because the VoIP service will not function. In the event that an issue arises which interrupts the internet service, the internet service may need to be restored; after the internet service is restored, it may be necessary for Everstream to reset or reconfigure the VoIP equipment for the 911 service to be available.
- o. EMERGENCY CALL CENTER SERVICES. Any end user or Subscriber facilities that originate 911 calls that are received by Everstream’s service platform for which no calling number record can be found in the database will be routed to an emergency call center for handling. Call center personnel will attempt to query the 911 caller for location information and manually route the call to the public safety answering point nearest to the caller’s identified location. Those 911 calls that originate from toll free numbers will be routed to an emergency call center for handling. Calls that are routed to call centers pursuant to this Section will incur a charge of One Hundred Twenty Dollars (\$120.00) per call.

- p. WARNING LABEL. A warning label will be provided to caution customers/users of the service regarding its limitations and Subscriber shall keep the label on and/or near the equipment used in conjunction with the VoIP service.
- q. LIABILITY IN NO EVENT SHALL EVERSTREAM, OR ITS OFFICERS OR EMPLOYEES, BE HELD LIABLE FOR ANY CLAIMS, DAMAGES, OR LOSSES ASSOCIATED WITH 911 EMERGENCY SERVICES. EVERSTREAM DOES NOT HAVE ANY CONTROL OVER ANSWERED OR UNANSWERED EMERGENCY RESPONSE CENTERS; THEREFORE, EVERSTREAM DISCLAIMS ALL RESPONSIBILITY FOR THE CONDUCT OF ANY EMERGENCY CALL CENTERS. A THIRD PARTY MAY BE USED TO ROUTE THE EMERGENCY CALL TO THE CALLING CENTER, AND IF SO, EVERSTREAM DISCLAIMS ANY AND ALL LIABILITY OR RESPONSIBILITY IN THE EVENT INCORRECT DATA IS USED BY THE THIRD PARTY. CUSTOMER HEREBY ACKNOWLEDGES THAT CUSTOMER IS AWARE OF THE POTENTIAL LIMITATIONS AND HEREBY WAIVES ANY AND ALL CLAIMS OR CAUSES OF ACTION AGAINST EVERSTREAM, OR ITS OFFICERS AND EMPLOYEES, ARISING FROM OR RELATING TO THE 911 VOIP SERVICE, UNLESS CAUSED BY EVERSTREAM'S WILLFUL MISCONDUCT.
- r. RAY BAUM'S ACT AND KARI'S LAW FOR MULTI-LINE VOICE CUSTOMERS. Subscriber agrees to comply with, follow, and adhere to, and require its customers to comply with, follow, and adhere to, all FCC regulations concerning multi-line telephone services (MLTS), including (i) KARI'S LAW, as it relates to 911 direct dialing and notifications for MLTS, and (ii) RAY BAUM'S ACT, as it relates to 911 dispatchable locations for MLTS (collectively, the "Acts"). Please see <https://www.fcc.gov/mlts-911-requirements> for specific information and requirements. Subscriber agrees to defend, indemnify, and hold harmless Everstream, its officers, elected officials, directors, employees, affiliates, volunteers, and agents from any and all claims, losses, damages, fines, penalties, costs, and expenses (including, without limitation, reasonable attorney's fees) relating to the compliance of Subscriber, or its customers, with any rules or regulations related to the Acts, and any subsequent amendments and/or revisions thereof.

### 23. INTERNET SERVICE(S).

- a. This **Article 23** will apply in the event that Subscriber intends to receive, or actually receives, internet services under the Everstream Fiber Business Essentials (the "Internet Service"), whether such Everstream.
- b. Internet access service is implemented using a fiber access and network copper or fiber handoff. Subscriber interface to the data network is via ethernet connection. The Services enable a variety of upstream and downstream rates. If Subscriber elects to receive the Service(s), Everstream shall provide connectivity from Subscriber site(s) to Subscriber's data network.
- c. THIRD PARTY SERVICES. The Internet Service may not be available in all service locations/areas and may change from time to time, in Everstream's sole discretion. In addition, certain non-facilities-based services provided by third parties may be offered to Subscriber by Everstream ("Third-Party Services"). Third Party Services may be subject to additional terms and conditions. Except to the limited extent described in this Attachment, Everstream makes no warranties of any kind (express or implied) regarding Third-Party Services and hereby disclaims any and all warranties pertaining thereto (including implied warranties of title, non-infringement, merchantability, and fitness for a particular purpose). Everstream does not have title to and is not the manufacturer of any software or hardware components of any Third-Party Services nor is Everstream the supplier of any components of such software or hardware. IN NO EVENT SHALL EVERSTREAM BE LIABLE FOR ANY DAMAGES ARISING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY THIRD- PARTY SERVICES.
- d. MINIMUM EQUIPMENT REQUIREMENTS.
  - i. Subscriber acknowledges that Everstream may post a list of certain minimum specifications related to Everstream's requirements of certain Subscriber Equipment and software in order for Everstream to continue provision of the Internet Service. As such, Subscriber agrees to reference <https://everstream.net/knowledge-base/> upon notice of Everstream's posting of such list in order to become familiar with the list. Additionally, Subscriber agrees to maintain the minimum equipment and software described at <https://everstream.net/knowledge-base/> as a condition to continually receive the Internet Services.
  - ii. Notwithstanding anything contained in **Section 23(d)(i)**, Subscriber acknowledges and agrees to the following:
    - 1. The minimum configuration standards may change, and Everstream will make reasonable efforts to support previously acceptable configurations; however, Everstream is not obligated to continue to provide such support.
    - 2. Everstream may supply Everstream Equipment for a fee in order to operate the Internet Service.



3. Everstream reserves the right to provide the Internet Service only to users with Everstream-approved equipment.
  4. Everstream Equipment may require updates and/or changes to the software resident in the Everstream Equipment and Subscriber may be required to perform such updates and/or changes upon Everstream's prior approval.
  5. Subscriber will allow Everstream to perform updates or changes, on-site or remotely from time to time as Everstream deems necessary, in Everstream's sole discretion, and will not connect any equipment, other than equipment authorized by Everstream, to the Everstream Network.
  6. When Everstream installs the Internet Service, Subscriber will need a network interface card or adapter providing an Ethernet connection. Alternatively, Subscriber may connect to a networking device (commonly referred to as a router or gateway).
- e. INTERNET SERVICE SPEEDS. Subscriber agrees and acknowledges that Everstream shall use commercially reasonable efforts to achieve the Internet speed attributable to the bandwidth for the Internet Service however, actual speed, also known as throughput rate, may vary.
  - f. SECURITY. Subscriber shall take commercially reasonable security measures when using the Internet Service and assumes sole responsibility for use of the Internet Service and for access to and use of Subscriber Equipment used in connection with the Internet Service and Everstream Network.
  - g. CHANGES OF ADDRESS. Everstream may change addressing schemes, including email and IP addresses provided by Everstream.
  - h. ACCEPTABLE USE POLICY. Subscriber shall comply with the terms of Everstream's Acceptable Use Policy ("AUP") found at <https://everstream.net/knowledge-base/what-is-everstreams-acceptable-use-policy/>, which is incorporated in the Terms and Conditions herein by reference. Subscriber represents and warrants that Subscriber has read the AUP and shall be bound by its terms as they may be amended, revised, replaced, supplemented or otherwise changed from time-to-time by Everstream with or without notice to Subscriber. Everstream may suspend Service immediately for any violation of the AUP.
  - i. EVERSTREAM BUSINESS WIFI. Everstream Business WiFi supported by a Everstream-provided wireless router is a service available to certain Subscribers and provides wireless access to the Internet Service within the Service Location ("WiFi Network"), for which Subscriber may be charged a fee consistent with Everstream's then-current practices. Subscriber must purchase Everstream Internet Service in order to receive Everstream Business WiFi. The Everstream-provided WiFi router comes programmed with certain default settings and configurations for the WiFi Network. Subscriber may modify the default settings and configurations on the Everstream-provided WiFi router although Everstream recommends maintaining the default configuration and settings. Everstream does not guarantee the security of the Everstream-provided WiFi router and Subscriber's connection to the Internet Service via the WiFi Network. Subscriber understands and agrees that Subscriber is solely responsible for the security of its WiFi Network and must enable and use encryption in order to access Everstream-provided applications. Subscriber understands that this service is intended to be used by the Subscriber and its End Users and that Everstream accepts no liabilities for any third-party usage.
  - j. The Everstream-provided WiFi router will collect and maintain certain information regarding access to and use of the WiFi Network, which information shall include but not be limited to device identifiers, device name, device type, applications and protocols, connections, and traffic flows. Such information will be used by Everstream to provide the Internet Service and support, as well as for Everstream's internal business analytics regarding the use of the Internet Service. Subscriber acknowledges and agrees that Everstream shall have access to the network name and password associated with the Everstream-provided WiFi router in order to provide support and diagnostic services. Everstream reserves the right to modify the WiFi network name and password for the Everstream-provided WiFi router in order to safeguard Internet security, the security and privacy of Subscriber's information, where required by law, or for other good cause to provide, upgrade, and maintain the Internet Service, and protect the network, other users of the Internet, or our customers and Subscribers. Abusive, vulgar, offensive, inappropriate or profane WiFi Network names are prohibited and may be modified in Everstream's sole discretion. Subscriber acknowledges that the Everstream-provided WiFi router is Everstream Equipment.
  - k. All WiFi Equipment constitutes Everstream Equipment. Subscriber may not relocate or disconnect the WiFi Equipment.

## 24. MANAGED SERVICE(S).

- a. This **Article 24** will apply in the event that Subscriber intends to receive, or actually receives, managed service(s) under the Everstream Fiber Business Essentials (the “Managed Service”), whether such Everstream.
- b. **MANAGED SERVICE(S) IN GENERAL.** The Managed Services may include software, firmware, and hardware components supplied by Everstream or third parties. Everstream is not the manufacturer or supplier of any software, firmware or hardware components of the Managed Services. Everstream may update a Managed Service from time to time based on manufacturer-provided updates.
- c. **TECHNICAL CONFIGURATION QUESTIONNAIRE.** Everstream may request that Subscriber complete a “Technical Configuration Questionnaire” to obtain information which is necessary for the provision of a Managed Service. Subscriber hereby acknowledges that Incomplete or incorrect configuration information may adversely affect the Managed Service.
- d. **SECURITY LIMITATIONS.** In accordance with the Disclaimer of Warranty and Limitation of Liability section of these Terms and Conditions, Subscriber assumes sole responsibility for use of the Managed Service and for access to and use of Subscriber Equipment used in connection with the Managed Service.
- e. **MANAGED WIFI SERVICE:** If Subscriber intends to receive, or actually receives, managed WiFi service the following will apply:
  - i. Everstream will provide Managed WiFi solution with wireless access points (“WAPs”) deployed at the designated Service Location to enable designated users of the Subscriber’s choice to wirelessly access the Internet as more specifically set forth in a Service Order. Managed WiFi Service or certain features, may not be available in all service areas and may change from time to time, in Everstream’s sole discretion.
  - ii. Connectivity to Local Area Networks. Configuration of the Managed WiFi Service will be as agreed in the Everstream WiFi technical configuration questionnaire completed by the Parties. Subscriber will need to train and engage Subscriber’s staff for all ongoing support issues. The Managed WiFi Service does not include support for connectivity to any device (printers, laptops, computers, routers, etc.).
- f. **MANAGED ROUTER SERVICE:** If Subscriber intends to receive, or actually receives, managed router service (“MRS”), Everstream will provide a managed router solution with a router deployed at the designated Service Location configured according to the Questionnaire. MRS or certain features, may not be available in all service areas and may change from time to time.
  - i. **CONNECTIVITY.** MRS is only available when connected via Everstream FIA, Everstream Business High-Speed Internet Service, or Everstream Ethernet Services Everstream Business Essentials Fiber. A third party connection can be used as a secondary connection where Everstream is providing the primary connection.
  - ii. **TERMINATION.** If Subscriber terminates the Service to which Subscriber has connected the MRS, then Subscriber shall be deemed to have terminated the corresponding MRS and may be subject to Termination Charges in accordance with these Terms and Conditions.

## **25. MISCELLANEOUS.**

- a. **ENTIRETY OF TERMS AND CONDITIONS.** These Terms and Conditions, including without limitation the Service Order and any written document(s) incorporated hereto, set forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.
- b. **NO ASSIGNMENT OR TRANSFER.** Subscriber may not assign or transfer (directly or indirectly by any means, including by operation of law or otherwise) its rights and/or obligations under the Terms and Conditions and/or the associated Service Order(s), or their rights or obligations hereunder to any other entity without first obtaining consent from Everstream, and any assignment or transfer in violation of this Section shall be null and void. Everstream may assign its rights and obligations under these Terms and Conditions, in whole or in part, and any Service Order(s) to affiliates controlling, controlled by or under common control with Everstream, or to its successor-in-interest if Everstream sells some or all of the underlying communications system(s) without the prior approval of or notice to Subscriber. Subscriber understands and agrees that, regardless of any such assignment, the rights and obligations of Everstream in the Terms and Conditions may accrue to, or be fulfilled by, any affiliate, as well as by Everstream or its subcontractors.

- c. SEVERABILITY. To the extent any term, covenant, condition or portion of these Terms and Conditions is held to be invalid or unenforceable, the remainder of these Terms and Conditions shall not be affected and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law as nearly as possible to reflect the original intentions of the Parties.
- d. FORCE MAJEURE. Notwithstanding anything to the contrary in the Terms and Conditions, neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond such Party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, weather, fire, flood, natural causes, mechanical or power failures, the unavailability of necessary materials at reasonable costs, fiber cuts, governmental acts or any order, law or ordinance in any way restricting the operation of the Services (each a "Force Majeure Event"). Changes in economic, business, or competitive conditions shall not be considered a Force Majeure Event.
- e. GOVERNING LAW; CLAIMS LIMITATION; WAIVER OF JURY TRIAL. This MSA shall be governed by and construed in accordance with applicable U.S. federal law and the laws of the State of Ohio, without regard to conflict of law principles. Each Party consents to the exclusive jurisdiction and venue of the U.S. federal and Ohio state courts located in and serving the City of Cleveland, in connection with any dispute arising out of or in connection with these Terms and Conditions, the Service Orders, and/or the subject matter of either or both. Any claim that Subscriber wishes to assert under the Terms and Conditions and/or Service Order must be initiated not later than one (1) year after the claim arose. IN ANY AND ALL CONTROVERSIES OR CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS, ITS NEGOTIATION, ENFORCEABILITY OR VALIDITY, OR THE PERFORMANCE OR BREACH THEREOF OR THE RELATIONSHIPS ESTABLISHED HEREUNDER, CUSTOMER AND EVERSTREAM EACH HEREBY WAIVES ITS RIGHT, IF ANY, TO TRIAL BY JURY.
- f. NO THIRD PARTY BENEFICIARIES. These Terms and Conditions and each Party's respective performance of obligations as described are not intended to benefit any person or entity not a Party to these Terms and Conditions, and the consideration provided by each Party hereunder only runs to the respective Parties, and that no person or entity not a Party to these Terms and Conditions shall have any rights hereunder nor the right to require performance of obligations by either of the Parties.
- g. WAIVER. Except as otherwise provided herein, the failure of Everstream to enforce any provision of these Terms and Conditions shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision. To be legally binding on Everstream, any waiver must be in writing.
- h. REMEDIES CUMULATIVE AND NONEXCLUSIVE. Unless stated otherwise herein, all rights and remedies of the Parties under these Terms and Conditions shall be cumulative, nonexclusive, and in addition to, but not in lieu of, any other rights or remedies available to the Parties whether provided by law, in equity, by statute or otherwise. The exercise of any right or remedy does not preclude the exercise of any other rights or remedies.