

**Everstream's online enterprise and wholesale master services agreement
terms and conditions are found below.**

ENTERPRISE MASTER SERVICES AGREEMENT

This Enterprise Master Services Agreement (“MSA”), effective the date Subscriber first agrees to a Service Order or quote (the “Effective Date”), is entered into by and between **Everstream Solutions LLC**, an Ohio limited liability company, with a principal place of business at 1228 Euclid Ave., Suite 250, Cleveland, Ohio 44115 on behalf of itself and its affiliate, Everstream GLC Holding Company LLC, (collectively “Everstream”), and **Subscriber** as described in the signature page below or through the online ordering process. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Everstream and Subscriber (collectively, the “Parties” or each individually a “Party”) agree as follows:

1. MSA

This MSA, together with any associated amendments, attachments or addendums (“Addendums”), Service Orders (defined below), hereby constitute the entire agreement (“Agreement”) by and between Everstream and Subscriber for the telecommunications facility or product provided or licensed by Everstream (“Services”).

2. SERVICE ORDERS AND SERVICE ACCEPTANCE

- a. Subject to the Agreement, Everstream shall provide Subscriber with the Services as detailed in an order form entered into by the Parties (“Service Order”).
- b. The “Service Acceptance Date” for each Service purchased by Subscriber will be the earliest of: 1) the date on which Everstream informs Subscriber that the Service is ready for use; 2) the date Subscriber first uses the Service, or 3) the date on which the Subscriber provides notice of acceptance of the Services.
- c. At Everstream’s option, Services may be provided by either Everstream or its Affiliate. The Everstream Network (defined below) may also include leased fiber, Everstream Indefeasible Rights of Use (“IRU”) and leased fiber optic Services. The term “Affiliate(s)” as used hereunder shall mean, with respect to either Party, any entity controlled by, in control of, or under common control with such Party.

3. INVOICING AND PAYMENT

- a. Invoicing of Services shall begin on the Service Acceptance Date, unless Subscriber notifies Everstream of a Defect in the Service in writing within five (5) days of the date that Everstream notifies Subscriber that the Service is ready. A “Defect” exists if the Service fails to perform materially in accordance with its technical specifications. In such instance where the five-day notice of a Defect is provided, invoicing will commence immediately upon Everstream’s provision of notice that the Service is ready after curing such Defect. Upon receipt of notice of a Defect, Everstream and Subscriber shall work cooperatively to promptly remedy such Defect under the terms and conditions of this Agreement. If the Service Acceptance Date is delayed as a result of any failure, act or omission of Subscriber, Everstream will give Subscriber written notice to cure such failure within five (5) days. If Subscriber fails to cure within such period, the Service Acceptance Date will be deemed to be the end of such five (5) day period.
- b. For each Service, Subscriber shall pay Everstream all recurring and non-recurring charges, fees and taxes, (collectively the “Service Charges”) as set forth in the associated Service Order including mutually agreed upon Service Charges incurred prior to the Service Acceptance Date, in accordance with the following payment Terms: recurring Service Charges shall be billed to Subscriber on a monthly basis commencing upon the Service Acceptance Date and are payable within thirty (30) days after the date appearing on the invoice. Non-recurring Service Charges shall be billed to Subscriber upon completion of the associated work or other frequency as determined by Everstream and are payable within thirty (30) days after the date appearing on the invoice. All payments hereunder will be in U.S. dollars by electronic wire transfer to the bank account designated by Everstream from time to time or by company check. If Subscriber seeks to make payment via credit card, then Subscriber must obtain prior written approval from Everstream and agree to Everstream’s credit card terms and conditions. Subscriber must bring any billing error to Everstream’s attention within thirty (30) days after the date appearing on the applicable invoice or Subscriber waives its right to a refund or credit associated with such billing error. Everstream shall not defer any charges while Subscriber awaits reimbursement, subsidy, discount or credit from any third-party or government entity, and Subscriber shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit. Everstream shall have the right to increase Service Charges for each Service after the Renewal Service Term for such Service upon thirty (30) days’ written notice to Subscriber.

- c. Subscriber's failure to pay any Service Charge when due constitutes a material breach. In the event of such breach by Subscriber, and subject to the cure provisions of Section 5, Subscriber shall immediately make full payment of all amounts that Everstream would have been entitled to receive hereunder for the remainder of the then-current Term as well as all costs incurred by Everstream to procure and maintain the applicable Service. If Subscriber cancels a Service Order prior to the Service Acceptance Date or fails to timely respond to communications from Everstream as set forth in Section 9.f., then Subscriber will pay Everstream a cancellation charge equal to the sum of: (1) for "off-net" Service, third party termination charges for the cancelled Service; (2) for "on-net" Service, one month's monthly recurring charges for the cancelled Service; (3) the non-recurring charges for the cancelled Service; and (4) Everstream's actual and verified out-of-pocket costs (if any) plus twenty percent (20%) incurred in constructing facilities necessary for Service delivery. Everstream may charge a late fee for any amounts which are not paid when due. The late fee shall be the greater of one and one-half percent (1.5%) per month or the highest rate chargeable by law. Subscriber shall also be responsible for all costs, including reasonable attorneys' fees associated with collection of past due amounts. If, at any time, Everstream has concern about security or timeliness of payments, it may suspend the Services and/or the rights granted hereunder upon advance written notice to Subscriber until receipt of payment or establishment of a letter of credit or other arrangement securing payment. Subscriber is directly responsible for the payment of all installation, recurring and non-recurring charges required to be paid to Everstream or third parties with respect to Off-Net Services and each Subscriber connection to the Everstream Network. Payments for these Services will be due when Subscriber orders the connection.
- d. Billing of a new or additionally added circuit begins upon the Service Acceptance Date.
- e. **SERVICE CREDIT.** In the event of a network outage or disruption that is caused in whole or in part by Subscriber, Subscriber shall not be entitled to receive a credit. In all other cases, excepting maintenance or upgrade Services scheduled with Subscriber and those pursuant to "Force Majeure," Subscriber is entitled to receive a credit against the amount invoiced for Services provided during the month in which the network outage occurred provided that Subscriber is current on all payments due to Everstream. Credits are available on a per-outage basis (prorated on a monthly basis) in any given calendar month. These service credits are the sole remedy available to Subscriber for service disruption, outage, or suspension of any kind whatsoever is described in the table below:

Instance of Network Outage	Credit Against the Appropriate Month's Service
< 1 Hour	0%
1 Hour to < 8 Hours	25%
>= 8 Hours	50%

Network outage service credit requests shall be submitted electronically or in writing to Subscriber's assigned Client Relationship Manager ("CRM") or other person designated by Everstream.

4. TERM

The MSA shall commence upon the Effective Date and continues through the later of: 1) five (5) years from the Effective Date, or 2) upon the expiration of the last active Service Order ("Term"), unless earlier terminated as provided herein. The term for each Service begins on the Service Acceptance Date and expires upon the end of the service term specified in the applicable Service Order ("Service Term"), unless earlier terminated as provided herein. Unless otherwise specified in the Service Order, if the Subscriber continues to receive Services after the expiration of the Service Term, then the Services shall auto-renew for successive twelve (12) month periods under the same Service Order terms and conditions ("Renewal Service Term"); however, each Party has the right to terminate the Services at the end of a Service Term or Renewal Service Term by providing the other Party written notice of such termination at least ninety (90) days prior to the end of such Service Term or Renewal Service Term. At least ninety (90) days prior to expiration of the Service Term or Renewal Service Term, Subscriber may elect to extend the Service Term on a month-to-month basis at then-current Everstream rates for the respective Service(s) without any discounts.

5. TERMINATION

- a. Everstream may terminate any and all Services in the event (i) Subscriber fails to timely and fully make any payment required hereunder, and such failure to pay is not cured within five (5) business days after written notice thereof.
- b. Either Party may terminate the Agreement or a Service Order: (a) upon thirty (30) days written notice, or five (5) business days in the event of non-payment of Service Charges, to the other Party of the other Party's material breach of the Agreement or associated Service Order, provided that such material breach is not cured within such thirty (30) day or such five (5) business day period; (b) immediately, in the event that 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 debtors, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange (individually a "Bankruptcy Event"); (c) in the event that, after entering into a Service Order, a site survey is conducted and it is determined that the construction costs shall require an increase; or (d) upon at least ninety (90) days written notice to the other Party before the end of an Initial Term or Renewal Term. In the event that Subscriber fails to comply with any applicable laws or regulations or the Terms of the Agreement, upon thirty (30) days' written notice, Everstream may suspend or terminate any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, Everstream may immediately terminate or suspend Subscriber's use of any Service if, in Everstream's sole discretion, Subscriber engages in fraudulent behavior, creates a security risk to Everstream, or is suspected violations of FCC rules.
- c. Upon the termination or expiration of the Agreement, including all associated Service Orders: (a) Everstream's obligations under the Agreement shall immediately cease; (b) Subscriber shall promptly pay all amounts due and owing to Everstream for Service(s) delivered prior to the date of termination or expiration, and any commercially reasonable deinstallation fees, if any; (c) Subscriber shall promptly cease all use of any software or hardware provided by Everstream under the Agreement, and shall return such software or hardware to Everstream; and (d) Subscriber shall return to Everstream or permit Everstream to remove, in Everstream's discretion, the Everstream Equipment in the same condition as when received, ordinary wear and tear excepted. Subscriber shall reimburse Everstream for the reasonable and documented costs of the repair or replacement, at Everstream's discretion, of any Everstream Equipment not returned in accordance with these terms.
- d. Notwithstanding anything to the contrary, in the event this MSA or any associated Service Order terminates for any reason other than as permitted under this Agreement, Subscriber shall, at Everstream's discretion: (a) promptly pay Everstream the full amount of the Service Charges that Subscriber would have been charged for the remainder of the Initial Term or the then-current Renewal Term; and (b) reimburse Everstream for all volume, Term or other discounts, rebates, promotions, and credits provided in anticipation of full performance of Subscriber's obligations and any unpaid portion of the installation fee set forth in the applicable Service Order(s).

6. SERVICE & EQUIPMENT INSTALLATION; ACCESS; UNDERLYING RIGHTS

- a. Subscriber shall ensure that it and each Subscriber customer or user, which uses the Service (each, an "End User"), shall obtain and maintain throughout the Term, such consents (including without limitation landlord and landowner consents) as are necessary to timely permit, and shall timely permit, Everstream personnel to install, deliver, operate and maintain the Services and Everstream Equipment (as defined herein) at Subscriber's and any Subscriber End User's facilities. Subscriber shall permit Everstream access to the Subscriber and End User facilities as needed to install, inspect, configure, upgrade, maintain or remove the Everstream Equipment and other Service components collocated at Subscriber's or an End User's facilities. Subscriber shall make and maintain throughout the Term all reasonable preparations necessary to permit the installation, maintenance and operation of the Service and any Everstream Equipment as specified by Everstream and that is required to provide the Services. 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, or access in areas under the control of Subscriber (whether as owner or tenant) or otherwise in connection with Subscriber's performance of its obligations pursuant to this Agreement; and shall be solely responsible for any such fees or expenses charged by a Subscriber End User.
- b. Subscriber, at its own expense, shall secure throughout the Term any access rights, consents, easements, leases, licenses or other agreements necessary to allow Everstream to install, deliver, operate and maintain the Services and Everstream Equipment (as defined herein). Such access rights shall grant to Everstream the right, without the requirement of notice, to access such premises twenty-four (24) hours a day, seven (7) days a week to install, maintain, repair, replace and remove any and all equipment, cables or other devices Everstream deems necessary

to provide the Service. In the event that any necessary Underlying Rights (defined below) are unable to be practicably acquired without Everstream incurring additional costs, and unless Subscriber bears the costs of obtaining such Underlying Rights, Everstream may, at its option, complete installations to the extent feasible without such required Underlying Rights or cancel the applicable Service Order and shall incur no liability to Subscriber hereunder. Everstream shall not be deemed to be in breach of this Agreement for its failure to meet any anticipated Service installation or delivery date if such failure is caused, in whole or in part, by (i) a Force Majeure Event, or (ii) failure to obtain, or delay in obtaining, any required Underlying Rights. "Underlying Rights" means any and all agreements, licenses, conduit use agreements, pole attachment agreements, leases, easements, access rights, rights-of-way, franchises, permits, governmental and regulatory approvals and authorizations, and other rights, consents, and approvals that are necessary to construct, install, maintain, operate, and repair the Everstream Network (defined below) and/or for Everstream to provide a Service. Without limiting the foregoing, Underlying Rights include agreements for Off-Net Services (defined below) that are necessary for Everstream to provide a Service. The Everstream Network or On-Net means Everstream's fiber optic cable network and associated optical and electronic equipment used to deliver the Service, whether owned, operated, leased, or otherwise obtained by Everstream.

- c. Provided that Subscriber properly performs all necessary Site preparation and provides Everstream with all required consents, Everstream shall use commercially reasonable efforts to install the Service in accordance with the latter of the service start date requested on a Service Order.

7. SUPPORT, MAINTENANCE AND UPGRADES

- a. Everstream shall use commercially reasonable efforts to maintain all Everstream owned, operated, or leased equipment, including as applicable, any cabling, conduit, risers, routers, or any related equipment (collectively, "Everstream Equipment"), on Everstream's side of the Demarcation Points used by Everstream to provide the Service. Everstream Equipment and Services on Subscriber's side of the Demarcation Points, as well as any other Subscriber-provided equipment, are the responsibility of Subscriber. Everstream shall provide a toll-free telephone number and email address, and/or portal to its Network Operations Center ("NOC") for inquiries and remote problem support for the Service. All such Subscriber support shall be provided only to Subscriber's designated personnel, as mutually agreed upon by Everstream and Subscriber. Subscriber is responsible for all communications and interfaces with its End Users. In no event shall Everstream be responsible for providing support for any network, equipment or software not provided and installed by Everstream or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, Everstream shall use commercially reasonable efforts to restore any fiber cable cuts on the Everstream Network and shall keep Subscriber reasonably advised of such restoration progress. Subscriber shall provide routine operational Service support for Everstream Equipment and Service components collocated at Subscriber's or an End User's facility, including without limitation by performing reboots, as requested by Everstream.
- b. EMERGENCY MAINTENANCE. Everstream may perform emergency maintenance in its reasonable discretion, with or without prior notice to Subscriber, to preserve the overall integrity of the Everstream Network, or as soon as reasonably practicable if the emergency maintenance will materially and adversely impact a Service.
- c. Everstream maintains the right to upgrade, modify, or enhance the Everstream Equipment, including related firmware, and the associated Service. Everstream also maintains the right to take any action that Everstream deems appropriate to protect the Service and the Everstream Equipment (defined below).

8. DESCRIPTION OF BASIC SERVICES; NOC

- a. The Services provided by Everstream to Subscriber are:
 - i. Design and Installation. Assistance in the design, selection and installation of the connection between the Subscriber network and the Everstream Network.
 - ii. Equipment Selection and Acquisition. Acquisition, installation, maintenance and operation of Everstream Equipment on the Everstream Network at the Subscriber site(s), if required.
 - iii. Maximum Bandwidth. The maximum bandwidth shall be set forth in the Service Order.
- b. NETWORK OPERATIONS SUPPORT.

- i. Network Operations Center. Everstream shall use commercially reasonable efforts to provide the NOC services seven (7) days a week, twenty-four (24) hours a day, excluding scheduled maintenance, required repair and events beyond Everstream's reasonable control. Subscriber will use best efforts to comply with reasonable procedures established from time to time by Everstream to best assure the ability of Everstream to diagnose, maintain and correct disruptions in network Services. A detailed description of Everstream's operations support, procedures and related matters is available upon request to the NOC.
- ii. Core NOC Functions. NOC Functions include the following: (i) open Service Tickets on all events, alarms and report trouble items; (ii) Conduct fault investigation and identifications; (iii) implement network repair and service restoration, including maintenance and upgrades; (iv) provision of remote logical service reconfiguration; (v) dispatch field technical service to Subscriber locations as requested; (vi) monitor and report on network status and Subscriber connectivity status; and (vii) maintain the Service Levels outlined in the tables below:

NETWORK PERFORMANCE SERVICE LEVELS		
NETWORK UPTIME	Basic Service Level Agreement ("SLA") uptime is defined as the percentage of time Subscriber has service as measured over the course of a month. Planned or emergency maintenance events are not factored into the Service uptime calculation. Everstream calculates network uptime during a calendar month as follows: $((\text{total minutes of availability in month})/(\text{total min in month})) * 100$.	
	SLA Network uptime for managed Ethernet, MPLS, VPN and Internet Service Delivery.	99.99%
	Basic SLA for Fiber Services (Everstream IRU and leased fiber optic Services).	99.90%
MEAN TIME TO REPAIR	Mean Time to Repair ("MTTR") SLAs are based upon the amount of time it takes to restore Services measured from the time a NOC service request ticket ("Ticket") is received by Everstream to the time the Ticket is closed. MTTR times vary based on whether the problem being addressed physically resides on the Everstream Network or on a third-party provider/Subscriber network ("Off-Net").	
	Everstream On-Net Services.	Four (4) Hrs.
	Everstream Off-Net Services.	Six (6) Hrs.
	Fiber Services (Everstream On-Net Only IRU).	Eight (8) Hrs.
	Note: Force Majeure Events are not subject to Everstream's MTTR SLA.	

- c. OWNERSHIP OF CONNECTION. Any Connection from the Everstream Network up to the connection point as provided under the Service Order ("Demarcation Point") becomes part of the Everstream Network upon installation. Subscriber has no ownership interest in the connection up to the Demarcation Point
- d. EQUIPMENT RECOMMENDATION. Subscriber agrees to employ commercially reasonable efforts to house Everstream-provided Equipment in accordance with any Environmental recommendations" as provided by Everstream. This includes the provisioning of power and space for Equipment needed to operate connection at Subscriber site(s) to Everstream Network. Subscriber will provide sufficient space for Everstream to install equipment to support the Services. Space will include sufficient power and environmental conditioning to support Everstream Equipment. Subscriber may provide backup power or an uninterruptable power supply ("UPS") or may contract with Everstream separately for UPS.

9. **SUBSCRIBER OBLIGATIONS**

- a. Subscriber's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of this Agreement. Subscriber shall not resell or redistribute (whether for a fee

or otherwise) the Service(s), or any portion thereof, or make any use of the Service other than for Subscriber's internal business purposes, unless otherwise agreed in writing by Everstream. Subscriber shall require that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and Terms of this Agreement. Upon reasonable notice to Subscriber, Everstream may audit Subscriber's use of the "Service Bandwidth" to ensure Subscriber's compliance with the terms of the Agreement and any related Service Order.

- b. Subscriber will designate one of Subscriber's routers/switches from which Subscriber's fiber will connect to the Everstream Network.
- c. Subscriber is responsible for the installation, maintenance, and repair of Subscriber-premise fiber between the Demarcation Point and the Subscriber's switch or router. Everstream will have no obligation to install, maintain, or repair Subscriber equipment.
- d. Subscriber will assign an operational and technical contact person to coordinate with Everstream regarding Services being provided under this Agreement.
- e. Subscriber shall ensure that all Everstream Equipment at Subscriber's and Subscriber's End Users' facilities remains free and clear of all liens and encumbrances, and Subscriber shall be responsible for loss or damage to the Everstream Equipment while at Subscriber's or an End User's facilities. Subscriber is responsible for ensuring that any Subscriber equipment used in connection with the Services is protected from fraudulent or unauthorized access. In addition, Subscriber is responsible for: (a) all content that is viewed, stored, or transmitted via the Service; and (b) all third-party charges incurred for merchandise and services accessed via the Service, if any. Subscriber shall conform its equipment and software, and ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by Everstream. Promptly upon notice from Everstream, Subscriber shall eliminate any hazard, interference or Service obstruction that any such Subscriber equipment is causing or may cause as reasonably determined by Everstream. Everstream may, at its sole option, suspend Service if any Subscriber equipment does not comply with the provisions herein.
- f. Subscriber shall promptly respond in full and in writing to all communications from Everstream, but in no event later than one (1) business day of receiving such communication. Subscriber's failure to timely respond to each such communication will subject Subscriber to Section 3.c.

10. TAXES

- a. Subscriber shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Agreement, including but not limited to state and local sales and use taxes, international, excise, sales, value added, consumption, gross receipts, access, franchise and other taxes, fees, assessments, duties and surcharges (including, without limitation, any universal service fund surcharge), telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. Subscriber is not responsible for taxes derived from Everstream's income.
- b. Subscriber acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification and/or treatment of some of the Services and, consequently, uncertainty about what fees, taxes and surcharges are due from Everstream and/or its Subscribers. Subscriber agrees that Everstream has the right to determine, in its sole discretion, which fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/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. If Subscriber believes it is exempt from Taxes, Subscriber shall provide Everstream with a legally valid and duly executed exemption certificate or any other information with respect to such exemption as Everstream may require. If any such exemption is ruled invalid by the tax or governmental authority for any reason, and Everstream has honored such claim of exemption, Subscriber shall reimburse Everstream for any Tax, surcharge, fee, or other liability, including without limitation any penalties and interest, arising from or in connection with such invalid claim of exemption.

11. PROPRIETARY RIGHTS AND CONFIDENTIALITY

- a. All materials including, but not limited to, any Everstream Equipment including related firmware, software, data and information provided by Everstream, and any documentation, data, know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, 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. Nothing herein is intended to convey any right or ownership interest to Subscriber or any other person or entity in or to such Everstream Materials. Subscriber shall acquire no interest in the Everstream Materials by virtue of its use or the payments provided for under this Agreement. Subscriber may use the Everstream Materials solely for Subscriber’s use of the Service during any applicable Service Term or Renewal Service Term and the same may not be transferred by Subscriber to any other person, corporation or entity except as permitted herein. Subscriber may not alter, misuse, remove, 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. All rights in the Everstream Materials not expressly granted to Subscriber in the Agreement are reserved to Everstream.

- b. The Parties acknowledge that Confidential Information may be disclosed from one Party to the other. “Confidential Information” means any and all information or data disclosed by or on behalf of a Party (the “Disclosing Party”) to the other Party (the “Recipient”) related to this Agreement, that has or could have commercial value or other utility in the business in which Disclosing Party is engaged, regardless of the form or means of delivery, and regardless of whether the information or data has been indicated as being Confidential Information. Confidential Information includes but is not limited to all project plans, schedules, Everstream Materials, drawings including CAD drawings, designs, and any related documents or materials, whether in paper, electronic, or oral form, which is received by the Receiving Party from the Disclosing Party or its Authorized Representative or Affiliate.
- c. Excluded from Confidential Information is information or data which is: (i) specifically excluded from being Confidential Information in writing by the Disclosing Party (ii) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (iii) discovered or created by the Receiving Party before disclosure by Disclosing Party; (iv) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party’s representatives; or (v) is authorized for disclosure by Receiving Party with Disclosing Party’s prior written approval.
- d. Receiving Party shall hold and maintain Confidential Information in strictest confidence for the sole and exclusive benefit of Disclosing Party and restrict access to Confidential Information to its employees, contractors, vendors, and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Upon written request from Disclosing Party, Receiving Party shall immediately return any Confidential Information.
- e. The provisions of this Section 11 survive the termination of this MSA, and shall remain in effect until (i) the information or data no longer qualifies as Confidential Information, or (ii) Disclosing Party releases Receiving Party in writing of its duty to protect the Confidential Information, or (iii) whichever occurs first.
- f. The Parties agree that a violation, or impending violation, of this Section 11 would cause irreparable injury to Disclosing Party for which it would have no adequate remedy at law, and agree that the Disclosing Party shall be entitled to immediate injunctive relief or any other equitable relief to remedy or prevent any breach or threatened breach of this MSA, in addition to any other rights and remedies available to it and that any cost or expenses incurred by the prevailing Party.

12. INDEMNIFICATION

Each Party agrees to defend, indemnify and hold harmless the other Party, its Affiliates, as well as the other Party’s respective officers, directors, employees and agents, from and against any third-party claims, losses, liabilities, damages, costs and expenses, including reasonable attorneys’ and other professional fees, to the extent arising out of or relating to: (a) the unlawful or non-permitted use of the Service; (b) personal injury or property damage to the extent caused by the negligence or willful misconduct of the indemnifying Party or its employees or agents.

13. DISCLAIMER OF WARRANTY

UNLESS OTHERWISE EXPRESSLY SPECIFIED IN THIS AGREEMENT, EVERSTREAM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVISIONED HEREIN. EVERSTREAM SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AS WELL AS ANY WARRANTIES REGARDING THE PERFORMANCE OR INTEROPERABILITY OF THE SERVICE IN CONNECTION WITH ANY SUBSCRIBER EQUIPMENT AND EXCEPT AS SPECIFICALLY SET FORTH

IN THE AGREEMENT, THE SERVICE, EVERSTREAM EQUIPMENT, AND EVERSTREAM MATERIALS ARE PROVIDED “AS IS.” EXCEPT AS SET FORTH IN THE AGREEMENT AND SUBJECT TO ANY SLA, EVERSTREAM DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY EVERSTREAM SHALL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. EVERSTREAM EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE, AND EVERSTREAM EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. SUBSCRIBER USES THE SERVICE AT ITS OWN RISK.

14. LIMITATION OF LIABILITY

- A. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, AN END USER OR ANY THIRD-PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE AGREEMENT, REGARDLESS OF WHETHER EITHER PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BOTH EVERSTREAM AND SUBSCRIBER’S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID OR OWED BY SUBSCRIBER UNDER THE SERVICE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE CLAIM ARISES. EXCEPT FOR SERVICE CREDITS SET FORTH HEREIN, IN NO EVENT SHALL EVERSTREAM’S AFFILIATES OR SUPPLIERS HAVE ANY LIABILITY TO SUBSCRIBER UNDER THE AGREEMENT. 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 EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO SUBSCRIBER EQUIPMENT, FACILITIES OR SERVICES.

15. FORCE MAJEURE

Notwithstanding anything to the contrary, and with the exception of payments, a Party shall have no liability to the other due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a “Force Majeure Event”).

16. ORDER OF PRECEDENCE AND CONFLICTS

Each Service shall be provisioned pursuant to an associated Service Order and the MSA. If documents referred to in this Agreement conflict with one another (including conflicting contract expiration dates), any such conflicts will be rectified in the following order: (a) Service Order, (b) applicable Addendum to the Agreement; and then (c) MSA.

17. GOVERNING LAW AND JURISDICTION; JURY TRIAL WAIVER; PREVAILING PARTY

This Agreement 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 Cleveland, OH, in connection with any dispute arising out of or in connection with this Agreement and/or its subject matter. Any claim that Subscriber wishes to assert under the Agreement must be initiated no later than one (1) year after the date the claim arose. The Parties waive any rights to trial by jury, whether in tort, contract, or otherwise, between the Parties arising out of this Agreement or the transactions related thereto. In the event of a lawsuit arising under, construing, or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs.

18. ASSIGNMENT

Subscriber may not assign the Agreement or any associated Service Order without the prior written consent of Everstream, except to a party that acquires all or substantially all of Subscriber’s assets and agrees to fulfill Subscriber’s obligations herein. Everstream may assign its rights and obligations under the Agreement including, without limitation, in whole or in part, without the prior written approval of or notice to Subscriber.

19. GENERAL

- a. No waiver of any right hereunder, or breach of, this Agreement will be effective unless in writing and signed by an authorized representative of the Party against whom the waiver is sought to be enforced.

- b. There are no third-party beneficiaries to the Agreement. The Parties to the Agreement are independent contractors.
- c. Except as expressly provided herein (e.g., Service Credits), the rights of Everstream and Subscriber hereunder are cumulative, and no exercise or enforcement by either Party hereto of any right or remedy hereunder will preclude the exercise or enforcement by such Party of any right or remedy hereunder or any right or remedy to which it is entitled by law or in equity.
- d. In the event that any portion of the Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the Parties set forth in the Agreement and the remainder of the Agreement shall remain in full force and effect.
- e. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile and electronic signatures will be deemed to be original signatures. This Agreement may also be agreed to pursuant to Everstream's online ordering process.
- f. Notwithstanding anything to the contrary, termination of this Agreement and/or a Service Order shall not affect either Party's accrued rights under this Agreement or the survival of any provision of this Agreement which is expressly or by implication are intended to survive on or after that termination.
- g. Each Party shall comply with all laws, ordinances, rules and regulations in its performance under the Agreement.
- h. The Agreement sets 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.

20. NOTICES

Any notice under the Agreement shall be given in writing and shall be transmitted 1) overnight or hand delivery via nationally recognized courier, or 2) certified or registered mail, postage prepaid, and return receipt requested, deemed to have been provided when received by the other Party at the respective addresses below or otherwise provided. Notices provided by Everstream may be delivered to the email address provided by Subscriber.

Notice Address:

Everstream Solutions LLC

Attn.: General Counsel

1228 Euclid Avenue

Suite 250

Cleveland, OH 44115

Legalnotices@everstream.net

Notice Address:

Notices to be provided to the address or email where invoices are delivered.

With a copy to:

carrierorders@everstream.net

WHOLESALE MASTER SERVICES AGREEMENT

This Wholesale Master Services Agreement (“MSA”), effective the date Subscriber first agrees to a Service Order or quote (the “Effective Date”), is entered into by and between **Everstream Solutions LLC**, an Ohio limited liability company, with a principal place of business at 1228 Euclid Ave., Suite 250, Cleveland, Ohio 44115 on behalf of itself and its affiliate, Everstream GLC Holding Company LLC, (collectively “Everstream”), and **Subscriber** as described in the signature page below or through the online ordering process. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Everstream and Subscriber (collectively, the “Parties” or each individually a “Party”) agree as follows:

1. MSA

This MSA, together with any associated amendments, attachments or addendums (“Addendums”), Service Orders (defined below), hereby constitute the entire agreement (“Agreement”) by and between Everstream and Subscriber for the telecommunications facility or product provided or licensed by Everstream (“Services”).

2. SERVICE ORDERS AND SERVICE ACCEPTANCE

- a. Subject to the Agreement, Everstream shall provide Subscriber with the Services as detailed in an order form entered into by the Parties (“Service Order”).
- b. The “Service Acceptance Date” for each Service purchased by Subscriber will be the earliest of: 1) the date on which Everstream informs Subscriber that the Service is ready for use; 2) the date Subscriber first uses the Service, or 3) the date on which the Subscriber provides notice of acceptance of the Services.
- c. At Everstream’s option, Services may be provided by either Everstream or its Affiliate. The Everstream Network (defined below) may also include leased fiber, Everstream Indefeasible Rights of Use (“IRU”) and leased fiber optic Services. The term “Affiliate(s)” as used hereunder shall mean, with respect to either Party, any entity controlled by, in control of, or under common control with such Party.

3. INVOICING AND PAYMENT

- a. Invoicing of Services shall begin on the Service Acceptance Date, unless Subscriber notifies Everstream of a Defect in the Service in writing within five (5) days of the date that Everstream notifies Subscriber that the Service is ready. A “Defect” exists if the Service fails to perform materially in accordance with its technical specifications. In such instance where the five-day notice of a Defect is provided, invoicing will commence immediately upon Everstream’s provision of notice that the Service is ready after curing such Defect. Upon receipt of notice of a Defect, Everstream and Subscriber shall work cooperatively to promptly remedy such Defect under the terms and conditions of this Agreement. If the Service Acceptance Date is delayed as a result of any failure, act or omission of Subscriber, Everstream will give Subscriber written notice to cure such failure within five (5) days. If Subscriber fails to cure within such period, the Service Acceptance Date will be deemed to be the end of such five (5) day period.
- b. For each Service, Subscriber shall pay Everstream all recurring and non-recurring charges, fees and taxes, (collectively the “Service Charges”) as set forth in the associated Service Order including mutually agreed upon Service Charges incurred prior to the Service Acceptance Date, in accordance with the following payment Terms: recurring Service Charges shall be billed to Subscriber on a monthly basis commencing upon the Service Acceptance Date and are payable within thirty (30) days after the date appearing on the invoice. Non-recurring Service Charges shall be billed to Subscriber upon completion of the associated work or other frequency as determined by Everstream and are payable within thirty (30) days after the date appearing on the invoice. All payments hereunder will be in U.S. dollars by electronic wire transfer to the bank account designated by Everstream from time to time or by company check. If Subscriber seeks to make payment via credit card, then Subscriber must obtain prior written approval from Everstream and agree to Everstream’s credit card terms and conditions. Subscriber must bring any billing error to Everstream’s attention within thirty (30) days after the date appearing on the applicable invoice or Subscriber waives its right to a refund or credit associated with such billing error. Everstream shall not defer any charges while Subscriber awaits reimbursement, subsidy, discount or credit from any third-party or government entity, and Subscriber shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit. Everstream shall have the right to

increase Service Charges for each Service after the Renewal Service Term for such Service upon thirty (30) days' written notice to Subscriber.

- c. Subscriber's failure to pay any Service Charge when due constitutes a material breach. In the event of such breach by Subscriber, and subject to the cure provisions of Section 5, Subscriber shall immediately make full payment of all amounts that Everstream would have been entitled to receive hereunder for the remainder of the then-current Term as well as all costs incurred by Everstream to procure and maintain the applicable Service. If Subscriber cancels a Service Order prior to the Service Acceptance Date or fails to timely respond to communications from Everstream as set forth in Section 9.f., then Subscriber will pay Everstream a cancellation charge equal to the sum of: (1) for "off-net" Service, third party termination charges for the cancelled Service; (2) for "on-net" Service, one month's monthly recurring charges for the cancelled Service; (3) the non-recurring charges for the cancelled Service; and (4) Everstream's actual and verified out-of-pocket costs (if any) plus twenty percent (20%) incurred in constructing facilities necessary for Service delivery. Everstream may charge a late fee for any amounts which are not paid when due. The late fee shall be the greater of one and one-half percent (1.5%) per month or the highest rate chargeable by law. Subscriber shall also be responsible for all costs, including reasonable attorneys' fees associated with collection of past due amounts. If, at any time, Everstream has concern about security or timeliness of payments, it may suspend the Services and/or the rights granted hereunder upon advance written notice to Subscriber until receipt of payment or establishment of a letter of credit or other arrangement securing payment. Subscriber is directly responsible for the payment of all installation, recurring and non-recurring charges required to be paid to Everstream or third parties with respect to Off-Net Services and each Subscriber connection to the Everstream Network. Payments for these Services will be due when Subscriber orders the connection.
- d. Billing of a new or additionally added circuit begins upon the Service Acceptance Date.
- e. Service Credit. In the event of a network outage or disruption that is caused in whole or in part by Subscriber, Subscriber shall not be entitled to receive a credit. In all other cases, excepting maintenance or upgrade Services scheduled with Subscriber and those pursuant to "Force Majeure," Subscriber is entitled to receive a credit against the amount invoiced for Services provided during the month in which the network outage occurred provided that Subscriber is current on all payments due to Everstream. Credits are available on a per-outage basis (prorated on a monthly basis) in any given calendar month. These service credits are the sole remedy available to Subscriber for service disruption, outage, or suspension of any kind whatsoever is described in the table below:

Instance of Network Outage	Credit Against the Appropriate Month's Service
< 1 Hour	0%
1 Hour to < 8 Hours	25%
>= 8 Hours	50%

Network outage service credit requests shall be submitted electronically or in writing to Subscriber's assigned Client Relationship Manager ("CRM") or other person designated by Everstream.

4. TERM

The MSA shall commence upon the Effective Date and continues through the later of: 1) five (5) years from the Effective Date, or 2) upon the expiration of the last active Service Order ("Term"), unless earlier terminated as provided herein. The term for each Service begins on the Service Acceptance Date and expires upon the end of the service term specified in the applicable Service Order ("Service Term"), unless earlier terminated as provided herein. Unless otherwise specified in the Service Order, if the Subscriber continues to receive Services after the expiration of the Service Term, then the Services shall auto-renew for successive twelve (12) month periods under the same Service Order terms and conditions ("Renewal Service Term"); however, each Party has the right to terminate the Services at the end of a Service Term or Renewal Service Term by providing the other Party written notice of such termination at least ninety (90) days prior to the end of such Service Term or Renewal Service Term. At least ninety (90) days prior to expiration of the Service Term or

Renewal Service Term, Subscriber may elect to extend the Service Term on a month-to-month basis at then-current Everstream rates for the respective Service(s) without any discounts.

5. TERMINATION

- a. Everstream may terminate any and all Services in the event (i) Subscriber fails to timely and fully make any payment required hereunder, and such failure to pay is not cured within five (5) business days after written notice thereof.
- b. Either Party may terminate the Agreement or a Service Order: (a) upon thirty (30) days written notice, or five (5) business days in the event of non-payment of Service Charges, to the other Party of the other Party's material breach of the Agreement or associated Service Order, provided that such material breach is not cured within such thirty (30) day or such five (5) business day period; (b) immediately, in the event that 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 debtors, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange (individually a "Bankruptcy Event"); (c) in the event that, after entering into a Service Order, a site survey is conducted and it is determined that the construction costs shall require an increase; or (d) upon at least ninety (90) days written notice to the other Party before the end of an Initial Term or Renewal Term. In the event that Subscriber fails to comply with any applicable laws or regulations or the Terms of the Agreement, upon thirty (30) days' written notice, Everstream may suspend or terminate any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, Everstream may immediately terminate or suspend Subscriber's use of any Service if, in Everstream's sole discretion, Subscriber engages in fraudulent behavior, creates a security risk to Everstream, or is suspected violations of FCC rules.
- c. Upon the termination or expiration of the Agreement, including all associated Service Orders: (a) Everstream's obligations under the Agreement shall immediately cease; (b) Subscriber shall promptly pay all amounts due and owing to Everstream for Service(s) delivered prior to the date of termination or expiration, and any commercially reasonable deinstallation fees, if any; (c) Subscriber shall promptly cease all use of any software or hardware provided by Everstream under the Agreement, and shall return such software or hardware to Everstream; and (d) Subscriber shall return to Everstream or permit Everstream to remove, in Everstream's discretion, the Everstream Equipment in the same condition as when received, ordinary wear and tear excepted. Subscriber shall reimburse Everstream for the reasonable and documented costs of the repair or replacement, at Everstream's discretion, of any Everstream Equipment not returned in accordance with these terms.
- d. Notwithstanding anything to the contrary, in the event this MSA or any associated Service Order terminates for any reason other than as permitted under this Agreement, Subscriber shall, at Everstream's discretion: (a) promptly pay Everstream the full amount of the Service Charges that Subscriber would have been charged for the remainder of the Initial Term or the then-current Renewal Term; and (b) reimburse Everstream for all volume, Term or other discounts, rebates, promotions, and credits provided in anticipation of full performance of Subscriber's obligations and any unpaid portion of the installation fee set forth in the applicable Service Order(s).

6. SERVICE & EQUIPMENT INSTALLATION; ACCESS; UNDERLYING RIGHTS

- a. Subscriber shall ensure that it and each Subscriber customer or user, which uses the Service (each, an "End User"), shall obtain and maintain throughout the Term, such consents (including without limitation landlord and landowner consents) as are necessary to timely permit, and shall timely permit, Everstream personnel to install, deliver, operate and maintain the Services and Everstream Equipment (as defined herein) at Subscriber's and any Subscriber End User's facilities. Subscriber shall permit Everstream access to the Subscriber and End User facilities as needed to install, inspect, configure, upgrade, maintain or remove the Everstream Equipment and other Service components collocated at Subscriber's or an End User's facilities. Subscriber shall make and maintain throughout the Term all reasonable preparations necessary to permit the installation, maintenance and operation of the Service and any Everstream Equipment as specified by Everstream and that is required to provide the Services. 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, or access in areas

under the control of Subscriber (whether as owner or tenant) or otherwise in connection with Subscriber's performance of its obligations pursuant to this Agreement; and shall be solely responsible for any such fees or expenses charged by a Subscriber End User.

- b. Subscriber, at its own expense, shall secure throughout the Term any access rights, consents, easements, leases, licenses or other agreements necessary to allow Everstream to install, deliver, operate and maintain the Services and Everstream Equipment (as defined herein). Such access rights shall grant to Everstream the right, without the requirement of notice, to access such premises twenty-four (24) hours a day, seven (7) days a week to install, maintain, repair, replace and remove any and all equipment, cables or other devices Everstream deems necessary to provide the Service. In the event that any necessary Underlying Rights (defined below) are unable to be practicably acquired without Everstream incurring additional costs, and unless Subscriber bears the costs of obtaining such Underlying Rights, Everstream may, at its option, complete installations to the extent feasible without such required Underlying Rights or cancel the applicable Service Order and shall incur no liability to Subscriber hereunder. Everstream shall not be deemed to be in breach of this Agreement for its failure to meet any anticipated Service installation or delivery date if such failure is caused, in whole or in part, by (i) a Force Majeure Event, or (ii) failure to obtain, or delay in obtaining, any required Underlying Rights. "Underlying Rights" means any and all agreements, licenses, conduit use agreements, pole attachment agreements, leases, easements, access rights, rights-of-way, franchises, permits, governmental and regulatory approvals and authorizations, and other rights, consents, and approvals that are necessary to construct, install, maintain, operate, and repair the Everstream Network (defined below) and/or for Everstream to provide a Service. Without limiting the foregoing, Underlying Rights include agreements for Off-Net Services (defined below) that are necessary for Everstream to provide a Service. The Everstream Network or On-Net means Everstream's fiber optic cable network and associated optical and electronic equipment used to deliver the Service, whether owned, operated, leased, or otherwise obtained by Everstream.
- c. Provided that Subscriber properly performs all necessary Site preparation and provides Everstream with all required consents, Everstream shall use commercially reasonable efforts to install the Service in accordance with the latter of the service start date requested on a Service Order.

7. SUPPORT, MAINTENANCE AND UPGRADES

- a. Everstream shall use commercially reasonable efforts to maintain all Everstream owned, operated, or leased equipment, including as applicable, any cabling, conduit, risers, routers, or any related equipment (collectively, "Everstream Equipment"), on Everstream's side of the Demarcation Points used by Everstream to provide the Service. Everstream Equipment and Services on Subscriber's side of the Demarcation Points, as well as any other Subscriber-provided equipment, are the responsibility of Subscriber. Everstream shall provide a toll-free telephone number and email address, and/or portal to its Network Operations Center ("NOC") for inquiries and remote problem support for the Service. All such Subscriber support shall be provided only to Subscriber's designated personnel, as mutually agreed upon by Everstream and Subscriber. Subscriber is responsible for all communications and interfaces with its End Users. In no event shall Everstream be responsible for providing support for any network, equipment or software not provided and installed by Everstream or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, Everstream shall use commercially reasonable efforts to restore any fiber cable cuts on the Everstream Network and shall keep Subscriber reasonably advised of such restoration progress. Subscriber shall provide routine operational Service support for Everstream Equipment and Service components collocated at Subscriber's or an End User's facility, including without limitation by performing reboots, as requested by Everstream.
- b. **EMERGENCY MAINTENANCE.** Everstream may perform emergency maintenance in its reasonable discretion, with or without prior notice to Subscriber, to preserve the overall integrity of the Everstream

Network, or as soon as reasonably practicable if the emergency maintenance will materially and adversely impact a Service.

- c. Everstream maintains the right to upgrade, modify, or enhance the Everstream Equipment, including related firmware, and the associated Service. Everstream also maintains the right to take any action that Everstream deems appropriate to protect the Service and the Everstream Equipment (defined below).

8. DESCRIPTION OF BASIC SERVICES; NOC

- a. The Services provided by Everstream to Subscriber are:
 - i. Design and Installation. Assistance in the design, selection and installation of the connection between the Subscriber network and the Everstream Network.
 - ii. Equipment Selection and Acquisition. Acquisition, installation, maintenance and operation of Everstream Equipment on the Everstream Network at the Subscriber site(s), if required.
 - iii. Maximum Bandwidth. The maximum bandwidth shall be set forth in the Service Order.
- b. NETWORK OPERATIONS SUPPORT.
 - i. Network Operations Center. Everstream shall use commercially reasonable efforts to provide the NOC services seven (7) days a week, twenty-four (24) hours a day, excluding scheduled maintenance, required repair and events beyond Everstream's reasonable control. Subscriber will use best efforts to comply with reasonable procedures established from time to time by Everstream to best assure the ability of Everstream to diagnose, maintain and correct disruptions in network Services. A detailed description of Everstream's operations support, procedures and related matters is available upon request to the NOC.
 - ii. Core NOC Functions. NOC Functions include the following: (i) open Service Tickets on all events, alarms and report trouble items; (ii) Conduct fault investigation and identifications; (iii) implement network repair and service restoration, including maintenance and upgrades; (iv) provision of remote logical service reconfiguration; (v) dispatch field technical service to

Subscriber locations as requested; (vi) monitor and report on network status and Subscriber connectivity status; and (vii) maintain the Service Levels outlined in the tables below:

NETWORK PERFORMANCE SERVICE LEVELS		
NETWORK UPTIME	Basic Service Level Agreement ("SLA") uptime is defined as the percentage of time Subscriber has service as measured over the course of a month. Planned or emergency maintenance events are not factored into the Service uptime calculation. Everstream calculates network uptime during a calendar month as follows: $((\text{total minutes of availability in month})/(\text{total min in month})) * 100$.	
	SLA Network uptime for managed Ethernet, MPLS, VPN and Internet Service Delivery.	99.99%
	Basic SLA for Fiber Services (Everstream IRU and leased fiber optic Services).	99.90%
MEAN TIME TO REPAIR	Mean Time to Repair ("MTTR") SLAs are based upon the amount of time it takes to restore Services measured from the time a NOC service request ticket ("Ticket") is received by Everstream to the time the Ticket is closed. MTTR times vary based on whether the problem being addressed physically resides on the Everstream Network or on a third-party provider/Subscriber network ("Off-Net").	
	Everstream On-Net Services.	Four (4) Hrs.
	Everstream Off-Net Services.	Six (6) Hrs.
	Fiber Services (Everstream On-Net Only IRU).	Eight (8) Hrs.
	Note: Force Majeure Events are not subject to Everstream's MTTR SLA.	

- c. **OWNERSHIP OF CONNECTION.** Any Connection from the Everstream Network up to the connection point as provided under the Service Order ("Demarcation Point") becomes part of the Everstream Network upon installation. Subscriber has no ownership interest in the connection up to the Demarcation Point
- d. **EQUIPMENT RECOMMENDATION.** Subscriber agrees to employ commercially reasonable efforts to house Everstream-provided Equipment in accordance with any Environmental recommendations" as provided by Everstream. This includes the provisioning of power and space for Equipment needed to operate connection at Subscriber site(s) to Everstream Network. Subscriber will provide sufficient space for Everstream to install equipment to support the Services. Space will include sufficient power and environmental conditioning to support Everstream Equipment. Subscriber may provide backup power or an uninterruptable power supply ("UPS") or may contract with Everstream separately for UPS.

9. **SUBSCRIBER OBLIGATIONS**

- a. Subscriber's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of this Agreement. Subscriber shall require that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and Terms of this Agreement. Upon reasonable notice to Subscriber, Everstream may audit Subscriber's use of the

“Service Bandwidth” to ensure Subscriber’s compliance with the terms of the Agreement and any related Service Order.

- b. Subscriber will designate one of Subscriber’s routers/switches from which Subscriber’s fiber will connect to the Everstream Network.
- c. Subscriber is responsible for the installation, maintenance, and repair of Subscriber-premise fiber between the Demarcation Point and the Subscriber’s switch or router. Everstream will have no obligation to install, maintain, or repair Subscriber equipment.
- d. Subscriber will assign an operational and technical contact person to coordinate with Everstream regarding Services being provided under this Agreement.
- e. Subscriber shall ensure that all Everstream Equipment at Subscriber’s and Subscriber’s End Users’ facilities remains free and clear of all liens and encumbrances, and Subscriber shall be responsible for loss or damage to the Everstream Equipment while at Subscriber’s or an End User’s facilities. Subscriber is responsible for ensuring that any Subscriber equipment used in connection with the Services is protected from fraudulent or unauthorized access. In addition, Subscriber is responsible for: (a) all content that is viewed, stored, or transmitted via the Service; and (b) all third-party charges incurred for merchandise and services accessed via the Service, if any. Subscriber shall conform its equipment and software, and ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by Everstream. Promptly upon notice from Everstream, Subscriber shall eliminate any hazard, interference or Service obstruction that any such Subscriber equipment is causing or may cause as reasonably determined by Everstream. Everstream may, at its sole option, suspend Service if any Subscriber equipment does not comply with the provisions herein.
- f. Subscriber shall promptly respond in full and in writing to all communications from Everstream, but in no event later than one (1) business day of receiving such communication. Subscriber’s failure to timely respond to each such communication will subject Subscriber to Section 3.c.

10. TAXES

- a. Subscriber shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Agreement, including but not limited to state and local sales and use taxes, international, excise, sales, value added, consumption, gross receipts, access, franchise and other taxes, fees, assessments, duties and surcharges (including, without limitation, any universal service fund surcharge), telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. Subscriber is not responsible for taxes derived from Everstream’s income.
- b. Subscriber acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification and/or treatment of some of the Services and, consequently, uncertainty about what fees, taxes and surcharges are due from Everstream and/or its Subscribers. Subscriber agrees that Everstream has the right to determine, in its sole discretion, which fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/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. If Subscriber believes it is exempt from Taxes, Subscriber shall provide Everstream with a legally valid and duly executed exemption certificate or any other information with respect to such exemption as Everstream may require. If any such exemption is ruled invalid by the tax or governmental authority for any reason, and Everstream has honored such claim of exemption, Subscriber shall reimburse Everstream for any Tax, surcharge, fee, or other liability, including without limitation any penalties and interest, arising from or in connection with such invalid claim of exemption.

11. PROPRIETARY RIGHTS AND CONFIDENTIALITY

- a. All materials including, but not limited to, any Everstream Equipment including related firmware, software, data and information provided by Everstream, and any documentation, data, know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, 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. Nothing herein is intended to convey any right or ownership interest to Subscriber or any other person or entity in or to such Everstream Materials. Subscriber shall acquire no interest in the Everstream Materials by virtue of its use or the payments provided for under this Agreement. Subscriber may use the Everstream Materials solely for Subscriber's use of the Service during any applicable Service Term or Renewal Service Term and the same may not be transferred by Subscriber to any other person, corporation or entity except as permitted herein. Subscriber may not alter, misuse, remove, 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. All rights in the Everstream Materials not expressly granted to Subscriber in the Agreement are reserved to Everstream.

- b. The Parties acknowledge that Confidential Information may be disclosed from one Party to the other. “Confidential Information” means any and all information or data disclosed by or on behalf of a Party (the “Disclosing Party”) to the other Party (the “Recipient”) related to this Agreement, that has or could have commercial value or other utility in the business in which Disclosing Party is engaged, regardless of the form or means of delivery, and regardless of whether the information or data has been indicated as being Confidential Information. Confidential Information includes but is not limited to all project plans, schedules, Everstream Materials, drawings including CAD drawings, designs, and any related documents or materials, whether in paper, electronic, or oral form, which is received by the Receiving Party from the Disclosing Party or its Authorized Representative or Affiliate.
- c. Excluded from Confidential Information is information or data which is: (i) specifically excluded from being Confidential Information in writing by the Disclosing Party (ii) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (iii) discovered or created by the Receiving Party before disclosure by Disclosing Party; (iv) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (v) is authorized for disclosure by Receiving Party with Disclosing Party's prior written approval.
- d. Receiving Party shall hold and maintain Confidential Information in strictest confidence for the sole and exclusive benefit of Disclosing Party and restrict access to Confidential Information to its employees, contractors, vendors, and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Upon written request from Disclosing Party, Receiving Party shall immediately return any Confidential Information.
- e. The provisions of this Section 11 survive the termination of this MSA, and shall remain in effect until (i) the information or data no longer qualifies as Confidential Information, or (ii) Disclosing Party releases Receiving Party in writing of its duty to protect the Confidential Information, or (iii) whichever occurs first.
- f. The Parties agree that a violation, or impending violation, of this Section 11 would cause irreparable injury to Disclosing Party for which it would have no adequate remedy at law, and agree that the Disclosing Party shall be entitled to immediate injunctive relief or any other equitable relief to remedy or prevent any breach or threatened breach of this MSA, in addition to any other rights and remedies available to it and that any cost or expenses incurred by the prevailing Party.

12. INDEMNIFICATION

Each Party agrees to defend, indemnify and hold harmless the other Party, its Affiliates, as well as the other Party's respective officers, directors, employees and agents, from and against any third-party claims, losses, liabilities, damages, costs and expenses, including reasonable attorneys' and other professional fees, to the extent arising out of or relating to: (a) the unlawful or non-permitted use of the Service; (b) personal injury or property damage to the extent caused by the negligence or willful misconduct of the indemnifying Party or its employees or agents.

13. DISCLAIMER OF WARRANTY

UNLESS OTHERWISE EXPRESSLY SPECIFIED IN THIS AGREEMENT, EVERSTREAM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE PROVIDED HEREIN. EVERSTREAM SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AS WELL AS ANY WARRANTIES REGARDING THE PERFORMANCE OR INTEROPERABILITY OF

THE SERVICE IN CONNECTION WITH ANY SUBSCRIBER EQUIPMENT AND EXCEPT AS SPECIFICALLY SET FORTH IN THE Agreement, THE SERVICE, Everstream Equipment, AND Everstream Materials ARE PROVIDED "AS IS." EXCEPT AS SET FORTH IN THE Agreement AND SUBJECT TO ANY SLA, Everstream DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY Everstream SHALL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. EVERSTREAM EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE, AND EVERSTREAM EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. SUBSCRIBER USES THE SERVICE AT ITS OWN RISK.

14. LIMITATION OF LIABILITY

- a. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, AN END USER OR ANY THIRD-PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE Agreement, REGARDLESS OF WHETHER EITHER Party HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. both everstream and subscriber's AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE Agreement (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID OR OWED BY SUBSCRIBER UNDER THE SERVICE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE twelve (12) MONTHS PRECEDING THE DATE THE CLAIM ARISES. EXCEPT FOR SERVICE CREDITS SET FORTH HEREIN, IN NO EVENT SHALL Everstream's AFFILIATES OR SUPPLIERS HAVE ANY LIABILITY TO SUBSCRIBER UNDER THE Agreement. 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 EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO SUBSCRIBER EQUIPMENT, FACILITIES OR SERVICES.

15. FORCE MAJEURE

Notwithstanding anything to the contrary, and with the exception of payments, a Party shall have no liability to the other due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a "Force Majeure Event").

16. ORDER OF PRECEDENCE AND CONFLICTS

Each Service shall be provisioned pursuant to an associated Service Order and the MSA. If documents referred to in this Agreement conflict with one another (including conflicting contract expiration dates), any such conflicts will be rectified in the following order: (a) Service Order, (b) applicable Addendum to the Agreement; and then (c) MSA.

17. GOVERNING LAW AND JURISDICTION; JURY TRIAL WAIVER; PREVAILING PARTY

This Agreement 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 Cleveland, OH, in connection with any dispute arising out of or in connection with this Agreement and/or its subject matter. Any claim that Subscriber wishes to assert under the Agreement must be initiated no later than one (1) year after the date the claim arose. The Parties waive any rights to trial by jury, whether in tort, contract, or otherwise, between the Parties arising out of this Agreement or the transactions related thereto. In the event of a lawsuit arising under, construing, or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

18. ASSIGNMENT

Subscriber may not assign the Agreement or any associated Service Order without the prior written consent of Everstream, except to a party that acquires all or substantially all of Subscriber's assets and agrees to fulfill Subscriber's

obligations herein. Everstream may assign its rights and obligations under the Agreement including, without limitation, in whole or in part, without the prior written approval of or notice to Subscriber.

19. GENERAL

- a. No waiver of any right hereunder, or breach of, this Agreement will be effective unless in writing and signed by an authorized representative of the Party against whom the waiver is sought to be enforced.
- b. There are no third-party beneficiaries to the Agreement. The Parties to the Agreement are independent contractors.
- c. Except as expressly provided herein (e.g., Service Credits), the rights of Everstream and Subscriber hereunder are cumulative, and no exercise or enforcement by either Party hereto of any right or remedy hereunder will preclude the exercise or enforcement by such Party of any right or remedy hereunder or any right or remedy to which it is entitled by law or in equity.
- d. In the event that any portion of the Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the Parties set forth in the Agreement and the remainder of the Agreement shall remain in full force and effect.
- e. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile and electronic signatures will be deemed to be original signatures. This Agreement may also be agreed to pursuant to Everstream's online ordering process.
- f. Notwithstanding anything to the contrary, termination of this Agreement and/or a Service Order shall not affect either Party's accrued rights under this Agreement or the survival of any provision of this Agreement which is expressly or by implication are intended to survive on or after that termination.
- g. Each Party shall comply with all laws, ordinances, rules and regulations in its performance under the Agreement.
- h. The Agreement sets 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.

20. NOTICES

Any notice under the Agreement shall be given in writing and shall be transmitted 1) overnight or hand delivery via nationally recognized courier, or 2) certified or registered mail, postage prepaid, and return receipt requested, deemed to

have been provided when received by the other Party at the respective addresses below or otherwise provided. Notices provided by Everstream may be delivered to the email address provided by Subscriber.

Notice Address:

Everstream Solutions LLC
Attn.: General Counsel
1228 Euclid Avenue
Suite 250
Cleveland, OH 44115
Legalnotices@everstream.net

Notice Address:

Notices to be provided to the address or email where invoices are delivered.

With a copy to:

wholesale@everstream.net