

EVERFAST TERMS OF SERVICE FOR INTERNET SERVICE

THESE TERMS OF SERVICE CONTAIN IMPORTANT INFORMATION REGARDING YOUR USE OF INTERNET SERVICE (“SERVICE”) PROVIDED BY EVERFAST FIBER NETWORKS LLC AND ITS OPERATING AFFILIATES (“WE”, “US” OR “EVERFAST”). THIS DOCUMENT IS A LEGALLY BINDING AGREEMENT THAT DESCRIBES THE TERMS AND CONDITIONS PURSUANT TO WHICH EVERFAST WILL PROVIDE ITS CUSTOMERS (“YOU,” “YOUR” OR “CUSTOMER”) WITH THE SERVICE AND ANY RELATED SOFTWARE AND EQUIPMENT.

PLEASE READ CAREFULLY

In addition to these Terms of Service, the terms of your specific Service plan, Everfast’s Acceptable Use Policy (“AUP”) and Privacy Policy, all of which may be updated from time-to-time by Everfast, constitute your agreement with us (collectively, “Agreement”). This Agreement is entered into between you and Everfast and applies to all Internet services and related data transport services provided to you directly by Everfast or indirectly through resale or agent arrangements that Everfast has made with third parties. The “Service” is further defined collectively hereunder to include, but is not limited to, high-speed Internet, data services that are provided over a wireless data network and other products and services provided to you under the Service plan applicable to your Service. The Service also includes (i) any software provided to you for use in connection with the Service which is owned by Everfast or its third party licensors, providers and suppliers (“Software”); (ii) any equipment provided to you by Everfast or its third party providers or suppliers, including without limitation modems, gateways, routers and other equipment (“Equipment”); (iii) any content provided by Everfast or its third party licensors, providers or suppliers that is accessible via the Service, including without limitation images, photographs, animations, video, audio, music, and text in any format (“Content”); and (iv) any subscription services, technical support services, email, domain name server (DNS) and other ancillary services provided to you by Everfast or its third party licensors, providers or suppliers including, without limitation, the ancillary services set forth on Attachment A hereto. The Service does not include voice telephony or video services.

These Terms of Service, Everfast’s AUP and Privacy Policy, and other policies applicable to the Service are posted online at www.everfastfiber.com (“Website”). Your acceptance and use of the Service indicates your agreement to comply with these Terms of Service, the specific terms of your Service plan (including the plan’s duration and any applicable early termination fees), the AUP and Privacy Policy, and all other policies that relate to your use of the Service. You agree with and are deemed to have accepted this Agreement upon the earlier of: (a) submission of your order; (b) your accepting the Terms of Service electronically; (c) your use of the Service; or (d) retention of any Equipment Everfast provides beyond thirty calendar days following delivery.

1. TERM OF AGREEMENT.

The term of this Agreement will either be month-to-month or for a specified yearly term (depending on the Service plan you select) (the “Term”). If no Term is selected, then the Term is month-to-month. The Term begins when you accept this Agreement and ends when either you or Everfast terminates this Agreement as permitted herein. If you change Service plans, your Term and monthly rate may change (depending on the plan you select), but all other provisions of this Agreement will remain in effect unless otherwise noted.

2. MODIFICATIONS TO THIS AGREEMENT.

From time-to-time Everfast will make modifications to this Agreement and the policies relating to the Service. You will be provided with notice of such modifications by: a) posting modifications to the Website; and/or b) sending an email to your primary email address on file. By entering into this Agreement, you agree to visit Everfast's website periodically to review any such modifications. Increases to the monthly price of the Service (excluding other charges as detailed in Section 7.1) become effective thirty days after notice is sent. Modifications to any other terms and conditions of Service become effective on the date noted in the posting and/or email. By continuing to use the Service after modifications are effective, you accept and agree to abide by all modifications that have been made.

3. AUTHORIZED USER, ACCOUNT USE, AND RESPONSIBILITIES.

3.1 Acknowledgement of Authority. You acknowledge that you are eighteen years of age or older and that you have the legal authority to enter into this Agreement. You agree promptly to notify Everfast whenever your personal or billing information changes.

3.2 Responsibility for Use. You are responsible for all use of your Service and account, whether by you or someone using your account with or without your permission, including all secondary or sub-accounts associated with your primary account, and you agree to pay for all activity associated with your account. You agree to comply with all applicable laws, regulations, and rules regarding your use of the Service and to only use the Service within the United States (unless otherwise permitted by this Agreement).

3.3 Restrictions on Use. The Service is a consumer grade service and is not designed for or intended to be used for any commercial purpose. Separate terms of service apply to the use of the Service for commercial purposes. You may not resell the Service, use it for high volume purposes, or engage in similar activities that constitute such use (commercial or non-commercial). You also may not exceed the bandwidth usage limitations that we may establish from time-to-time for the Service. Violation of this section may result in bandwidth restrictions on your Service or suspension or termination of your Service.

4. PRIVACY POLICY.

Personal information you provide to Everfast is governed by Everfast's Privacy Policy, which is posted on the Website and is subject to change from time-to-time.

5. AVAILABILITY OF AND CHANGES TO SERVICE.

5.1 Service and Bandwidth Availability and Speed. The Service you select may not be available in all areas or at the rates, speeds, or bandwidth generally marketed. Bandwidth is provided on a per-line (not a per-device) basis. The bandwidth available to each device connected to the network will vary depending upon the number, type and configuration of devices using the Service and the type of use (e.g., streaming media), among other factors. The speed of the Service will vary and the actual data transfer or "throughput" may be lower than your modem sync-rate based on many factors including, but not limited to, network or Internet congestion, your device's processing power or other limitations or configurations, the number of devices or data streams simultaneously using the connection, and spectral interference, if you are connecting to a modem using a wireless network. Everfast and Everfast's suppliers reserve the right, at any time, with or without prior notice to you, to restrict or suspend the Service to perform maintenance activities and to maintain session control. For Customers that subscribe to any equipment lease programs, troubleshooting and related support is limited to diagnosing the cause or suspected cause of any modem or gateway performance issues and excludes any troubleshooting and support of your computer or other device and any wiring (whether directly or indirectly related to the modem or gateway). Any available technical support beyond diagnosing the cause or suspected cause is a chargeable service. To properly troubleshoot a modem

or gateway performance issue, Everfast may require that you replace the current wiring (at your expense) to ensure proper compliance with the modem or gateway specifications or industry standard guidelines for optimum performance as part of the troubleshooting process and prior to any repair or replacement of a modem or wireless gateway.

5.2 Changes to Service or Features. We reserve the right to change any of the features, Content, or applications of the Service at any time, with or without notice to you. This includes the portal services we may make available as part of the Service or for an additional charge.

5.3 Force Majeure. If the performance of any obligation of Everfast or its suppliers or providers hereunder is interfered with by reason of any circumstance beyond our or their reasonable control, including, but not limited to, acts of God, labor strikes and other labor disturbances, cable cuts, power surges or interruptions or failures of electrical service, changes in laws or regulations or other actions of governmental authorities, or the act or omission of any third party, we will be excused from such performance to the extent of such interference, provided that Everfast uses reasonable commercial efforts under the circumstances to avoid or remove such causes of nonperformance.

6. SOFTWARE LICENSES AND THIRD-PARTY SERVICES.

6.1 We may provide you, for a fee or at no charge, Software for use in connection with the Service. We reserve the right periodically to update, upgrade or modify the Software remotely or otherwise and to make related changes to the settings and software on your computer, tablet or other device or your Equipment, and you agree to permit such changes and access to your device and Equipment. You may use the Software only in connection with the Service and for no other purpose.

6.2 Certain Software may be accompanied by an end user license agreement (“EULA”) from Everfast or a third party. Your use of the Software is governed by the terms of that EULA and by this Agreement, where applicable. You may not install or use any Software that is accompanied by or includes a EULA unless you first agree to the terms of the EULA. Violation of the terms or conditions of the EULA may, in our discretion, result in the termination of your Service.

6.3 For Software not accompanied by a EULA, you are hereby granted a revocable, non-exclusive, non-transferable license by Everfast or its applicable third-party licensor(s) to use the Software (and any modifications, updates and upgrades thereto). You may not make any copies of the Software. You agree that the Software is the confidential information of Everfast or its third-party licensors and that you will not disclose or use the Software except as expressly permitted herein. The Software contains copyrighted material, trade secrets, patents, and proprietary information owned by Everfast or its third-party licensors. You may not de-compile, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms of the Software, otherwise reduce the Software to a human readable form, modify, rent, lease, loan, use for timesharing or service bureau purposes, reproduce, sublicense or distribute copies of the Software, or otherwise transfer the Software to any third party. You may not remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of the Software. You are not granted any title or rights of ownership in the Software. You acknowledge that this license is not a sale of intellectual property and that Everfast or its third-party licensors continue to own all right, title and interest, including, but not limited to, all copyright, patent, trademark, trade secret, and moral rights, to the Software and related documentation, as well as any modifications, updates, and upgrades to it. The Software may be used in the United States only, and any export of the Software is strictly prohibited.

6.4. Your license to use the Software or any ancillary subscription services will remain in effect until terminated by Everfast or its third-party licensors, or until your Service is terminated. Upon termination of your Service, you must cease all use of and immediately delete the Software from your computer or other device.

7. PRICING, CHANGES TO SERVICE PLANS AND PAYMENT.

7.1 Prices and Fees; Billing. You agree to pay the monthly fees applicable to your Service on or before the date on which they are due, and to pay: (a) applicable taxes, (b) surcharges, (c) recovery fees, (d) telephone charges, (e) activation fees, (f) installation fees, (g) set-up fees, (h) Equipment charges, (i) lease charges, (j) ETFs, and (k) other recurring and nonrecurring charges. The taxes, fees and other charges detailed in (a)–(d) above may vary monthly. Surcharges and recovery fees are not taxes and are not required by law but are set by us and may change. You also agree to pay any additional charges or fees applied to your account, including interest and charges due to insufficient credit or insufficient funds. Non-recurring charges such as set up, activation and installation fees and Equipment charges will be included in your first bill. Monthly Service recurring charges will be billed one month in advance and any usage charges will be billed in arrears. Promotional rates may reflect a fixed discount on the monthly base rate for the service and base rates may be subject to change during the Term. Customer is liable for the undepreciated list price for any unreturned Equipment. For Customers participating in a lease program, Everfast will repair or replace any damaged leased Equipment (e.g., Internet modem or wireless gateway) at no cost to you; however, Everfast reserves the right to charge you for the undepreciated list price of the Equipment, not repair the Equipment, or terminate the Service for damaged Equipment that is caused, in Everfast’s sole discretion, by the intentional or repeated careless or negligent acts or omissions of you or a third party. All lease charges for any Equipment are per month, per device. Any Equipment received may be new, repaired, or refurbished. You must subscribe to the Service to participate in the lease modem program. Shipping charges will be incurred by you for the mailing of damaged Equipment, Equipment needing repair, or when returning Equipment, unless Everfast provides you with a pre-paid shipping label. If installation of Equipment is completed by Everfast, an installation charge will also apply to you, unless otherwise agreed to by Everfast or waived as part of a promotion or plan. Based on your election and subject to our approval, Everfast or its agent will bill you directly, or bill your charge card or local Everfast telephone bill (where available). IF YOU ELECT TO BE BILLED ON YOUR EVERFAST PHONE BILL, BY USING THE SERVICES YOU AGREE TO HAVE ALL SERVICE CHARGES INCLUDED ON YOUR PHONE BILL. Billing for Service will automatically begin on the date provisioning of your Service is complete (“Service Ready Date”). We may, at our election, waive any fees or charges. If you wish to cancel your Service, you may do so by calling Everfast at (913) 825-3000. Standard pricing at the time of placing the Service order applies. The leased equipment is the property of Everfast. Upon cancellation of Service and unless your Service plan provides for a different period of return, you must return the leased Everfast modem or wireless gateway within 10 business days to avoid additional charges for the Equipment, by using the return label included with the Equipment or the return label supplied with the lease Equipment letter.

7.2 Pricing Plans with Minimum Terms. You agree to maintain your Service for the Term that applies to the plan you have selected (a “Term Plan”). Your Term Plan begins on the later of: (a) the date you change your existing Service plan to a Term Plan; or (b) your Service Ready Date. At the end of any Term Plan, you may be given the option to select a new Term Plan. If you do not select a new Term Plan, your Service will automatically convert to a month-to-month Service plan at a monthly fee that may be higher than your current rate. If you select a new Term Plan, the terms of that plan will apply.

7.3 Money Back Guarantee. If we provide a money back guarantee (“MBG”) for your Service, it will begin on your Service Ready Date. During this MBG period you may cancel your Service and receive a

full refund of all monthly, one-time and Equipment charges already paid to us (provided you return all Equipment as required in good working condition and without damage). If you fail to return the Equipment as required or if it is damaged, an Equipment fee will apply. Except for any unreturned or damaged Equipment, ETFs will not apply to Service terminated within the MBG period. The MBG does not apply to existing customers who change or renew their existing Service. The MBG is limited to one per Customer per Service type per Service address per year.

7.4 Discontinuation of Service for Nonpayment. We may discontinue Service without notice if you fail to make payment when due for either telephone or Internet Service charges, or if your payment method (i.e., personal check, credit, or debit card) is refused for any reason.

7.5 Late Fees. If any portion of your bill is not paid by the due date, we may charge you a late fee on unpaid balances and may also terminate or suspend your Service without notice. The late fee will be the lesser of 1.5 % per month, or the highest rate permitted by law. If we use a collection agency or resort to legal action to recover monies due, you agree to reimburse us for all expenses we incur to recover such monies, including attorneys' fees.

7.6 Deposits. We may require that you provide us with a refundable deposit ("Customer Deposit") prior to the provision of Service(s). We may also require an additional deposit after activation of the Service if you fail to pay any amounts when due. Within ninety days of termination of service, we will return to you a sum equal to the Customer Deposit, without interest unless otherwise required by law, minus any amounts due on your account including, without limitation, any amounts owed to us for unreturned or damaged Equipment, if applicable. If you fail to pay for the Service when due, we may use the Customer Deposit to satisfy amounts due without giving you notice and may then require you to replenish the Customer Deposit.

7.7 Local Telephone, Toll and Long-Distance Charges. EVERFAST IS NOT RESPONSIBLE FOR ANY CHARGES INCLUDING, BUT NOT LIMITED TO, LONG DISTANCE AND METERED LOCAL TELEPHONE, TOLL OR LONG-DISTANCE CHARGES INCURRED WHEN YOU ACCESS THE SERVICE.

8. TERMINATION OR SUSPENSION OF SERVICE.

8.1 Termination of Service.

8.1.1 Month-to-Month Accounts. If you are on a month-to-month Term Plan, either you or Everfast may terminate this Agreement at any time by giving notice to the other as set forth in this Agreement. Termination will be effective upon your notice to Everfast. Activation or set-up fees paid at the initiation of your Service, if any, are not refundable, except, if applicable, during the 30-day MBG period.

8.1.2 Term Plans; Early Termination Fee. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, IF YOUR SERVICE IS TERMINATED BY YOU OR BY EVERFAST BEFORE COMPLETING YOUR TERM PLAN, THEN YOU AGREE TO PAY US THE EARLY TERMINATION FEE AS SET FORTH IN THE PRICING PLAN YOU HAVE CHOSEN. If you terminate Service at one location, your existing Term Plan cannot be carried over to a new Service location.

8.1.3 Termination and/or Suspension by Everfast. Everfast reserves the right to change, limit, terminate, modify, or temporarily or permanently cease providing the Service or any part of it with or without prior notice in accordance with this Agreement or if you violate any terms of this Agreement. If Everfast terminates your Service under this Section 8.1.3, you must immediately stop using the Service and you will

be responsible for the applicable fees and/or Equipment charges set forth in Sections 7.5, 8.1.1, or 8.1.2. If your Service is reconnected, a reconnection fee may apply.

8.2 Deletion of Data upon Termination. YOU AGREE THAT IF YOUR SERVICE IS TERMINATED FOR ANY REASON, WE HAVE THE RIGHT TO IMMEDIATELY DELETE ALL DATA, FILES AND OTHER INFORMATION (INCLUDING EMAILS, ADDRESS BOOK AND WEB STORAGE CONTENT) STORED IN OR FOR YOUR ACCOUNT WITHOUT FURTHER NOTICE TO YOU.

8.3 Return of Equipment upon Termination. If your Service is terminated for any reason and you received Equipment at no charge from Everfast or it is leased, you must return the Equipment to Everfast within 10 business days following termination or you will be charged for the Equipment, unless your Service plan provides for a different period of return.

9. MANAGEMENT OF YOUR DATA AND COMPUTER.

9.1 Your Responsibilities Regarding Management of Your Computer and Data. You acknowledge that the installation, inspection, maintenance, repair, and/or removal of Equipment and Software could result in service outages or potential damage to your device, computer network and/or the contents thereof. ACCORDINGLY, you agree that you are solely responsible for obtaining, maintaining, and updating all Equipment and Software necessary to use the Service, and for management of your information including, but not limited to, back-up and restoration of your data. YOU AGREE THAT EVERFAST IS NOT RESPONSIBLE FOR THE LOSS OF YOUR DATA OR FOR THE BACK-UP OR RESTORATION OF YOUR DATA REGARDLESS OF WHETHER THIS DATA IS HOSTED OR MAINTAINED ON OUR SERVERS, A THIRD-PARTY'S SERVERS, OR YOUR DEVICE(S). YOU SHOULD ALWAYS BACK-UP ANY IMPORTANT INFORMATION SEPARATELY FROM DATA STORED ON EVERFAST'S OR ANY THIRD PARTY'S SERVERS.

9.2 Content and Data Management by Everfast: We reserve the right to: (a) use, copy, display, store, transmit and reformat data transmitted over our network and to distribute such content to multiple Everfast servers for our own back-up and maintenance purposes; and (b) block or remove any unlawful content you store on or transmit to or from any Everfast server. We do not guarantee the protection of your content or data located on our servers or transmitted across our network (or other networks) against loss, alteration, or improper access.

9.3 Your Responsibilities Regarding Security. Unless otherwise prohibited by law, you agree that you are solely responsible for maintaining the security of your computer or other device and the security of your data, including without limitation, encryption of data and protection of your User ID, password, and personal and other data. WE STRONGLY RECOMMEND THE USE (AND APPROPRIATE UPDATING) OF COMMERCIAL ANTI-VIRUS, ANTI-SPYWARE AND FIREWALL SOFTWARE. IT IS ALSO YOUR RESPONSIBILITY TO SECURE YOUR NETWORK. INSTRUCTIONS FOR CERTAIN SECURITY SETTINGS RELATED TO THE MODEM OR GATEWAY ARE IN THE USER GUIDE AND WE STRONGLY RECOMMEND THAT YOU IMPLEMENT THESE SECURITY SETTINGS AT A MINIMUM BEFORE USE OF THE SERVICE.

9.4 Monitoring of Network Performance by Everfast. We automatically measure and monitor network performance and the performance of your Internet connection and our network. We also will access and record information about your computer or other device and your Equipment's profile and settings and the installation of Software we provide. You agree to permit us to access your computer or other device and your Equipment and to monitor, adjust and record such data, profiles, and settings for the purpose of providing the Service. You also consent to our monitoring of your Internet connection and network

performance, and to our accessing and adjusting your device's settings, as they relate to the Service, Equipment, Software, or other services, which we may offer from time-to-time. We do not share information collected for the purpose of network performance monitoring or for providing customized technical support outside of Everfast or its authorized vendors, contractors and agents.

10. LIMITATIONS ON USE OF THE SERVICE.

10.1 You acknowledge and agree that Everfast (a) is not responsible for invalid destinations, transmission errors, or the corruption of your data; and (b) does not guarantee your ability to access all websites, servers or other facilities or that the Service is secure or will meet your needs.

10.2 You acknowledge that the Service will allow access to information which may be sexually explicit, obscene, or offensive, or otherwise unsuitable for children. You agree that the supervision of the use of the Service by children is your responsibility and that we are not responsible for access by you or any other users to objectionable or offensive content. WE STRONGLY RECOMMEND THE USE OF COMMERCIALY AVAILABLE CONTENT FILTERING SOFTWARE.

10.3 You understand and agree that if you type a nonexistent or unavailable Uniform Resource Locator (URL) or enter a search term into your browser address bar, Everfast may present you with an advanced web search page ("AWS Page") containing suggested links based upon the query you entered in lieu of you receiving an NXDOMAIN or similar error message. Everfast's provision of the AWS Page may impact applications that rely on an NXDOMAIN or similar error messages and may override similar browser-based search results pages. If you would prefer not to receive AWS Pages from Everfast, you should follow the opt-out instructions that are available by clicking on the "About the Search Results Page" link on our AWS Page.

10.4 You are not authorized to use any Everfast name or mark as a hypertext link to any Everfast web site or in any advertising, publicity or in any other commercial manner without the prior written consent of Everfast.

10.5 You agree that Everfast assumes no responsibility for the accuracy, integrity, quality completeness, usefulness or value of any Content, advice or opinions contained in any emails, message boards, chat rooms or community services, or in any other public services or social networks, and that Everfast does not endorse any advice or opinion contained therein, whether or not Everfast provides such service(s). Everfast does not monitor or control such services, although we reserve the right to do so.

10.6 You represent that when you transmit, upload, post or submit any Content, images or data using the Service you have the legal right to do so and that your use of such data or content does not violate the copyright or trademark laws or any other third-party rights. In accordance with the Digital Millennium Copyright Act of 1998 (DMCA) and other applicable law, it is the policy of Everfast, in appropriate circumstances and in our sole judgment, to terminate Service provided to any Customer who infringes third party intellectual property rights, including repeat infringers.

10.7 Websites linked to or from the Service are not reviewed, controlled, or examined by Everfast and you acknowledge and agree that we are not responsible for any losses you incur or claims you may have against the owner of third-party websites. The inclusion of any linked websites or content from the Service, including websites or content advertised on the Service, does not imply endorsement of them by Everfast.

11. WARRANTIES AND LIMITATION OF LIABILITY.

11.1 YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE SUPPLIED HEREUNDER IS PROVIDED ON AN “AS IS” OR “AS AVAILABLE” BASIS, WITH ALL FAULTS, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY EQUIPMENT PROVIDED BY EVERFAST (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH EQUIPMENT). EVERFAST (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES) AND ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS FOR THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, COMPATIBILITY OF SOFTWARE PROGRAMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. EVERFAST DISCLAIMS ANY WARRANTY OF WORKMANLIKE EFFORT OR LACK OF NEGLIGENCE. ANY ADVICE OR INFORMATION GIVEN BY EVERFAST OR ITS REPRESENTATIVES WILL NOT CREATE A WARRANTY WITH RESPECT TO THE ADVICE PROVIDED.

11.2 EVERFAST DOES NOT WARRANT OR GUARANTEE THAT SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF WE HAVE ACCEPTED YOUR ORDER FOR SERVICE. THE PROVISIONING OF SERVICE IS SUBJECT TO NETWORK AVAILABILITY, CIRCUIT AVAILABILITY, THE CONDITION OF YOUR TELEPHONE LINE AND WIRING INSIDE YOUR LOCATION, AND YOUR COMPUTER/DEVICE CONFIGURATION AND CAPABILITIES, AMONG OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR EVERFAST WILL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY EVERFAST-PROVIDED EQUIPMENT).

11.3 EVERFAST DOES NOT WARRANT THAT THE SERVICE OR EQUIPMENT PROVIDED BY EVERFAST WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR CONDITIONS, OR THE LIKE. EVERFAST WILL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE.

11.4 NEITHER EVERFAST NOR EVERFAST’S THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS WILL BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE, LOSS OF PROGRAMS OR INFORMATION OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, OR RELIANCE ON OR PERFORMANCE OF THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION INCLUDING, WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

11.5 THE LIABILITY OF EVERFAST, OR (SUBJECT TO ANY DIFFERENT LIMITATIONS OF LIABILITY IN THIRD-PARTY END USER LICENSE OR OTHER AGREEMENTS) THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS, FOR ALL CATEGORIES OF DAMAGES WILL NOT

EXCEED A PRO RATA CREDIT FOR THE MONTHLY FEES (EXCLUDING ALL NONRECURRING CHARGES, REGULATORY FEES, SURCHARGES, FEES AND TAXES) YOU HAVE PAID TO EVERFAST FOR THE SERVICE DURING THE SIX MONTH PERIOD IMMEDIATELY PRIOR TO WHEN SUCH CLAIM AROSE, WHICH WILL BE YOUR SOLE AND EXCLUSIVE REMEDY REGARDLESS OF THE TYPE OF CLAIM OR NATURE OF THE CAUSE OF ACTION. THE FOREGOING LIMITATIONS APPLY TO THE FULL EXTENT PERMITTED BY LAW AND ARE NOT INTENDED TO ASSERT ANY LIMITATIONS OR DEFENSES WHICH ARE PROHIBITED BY LAW.

11.6 ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS SECTION 11 ALSO APPLY TO EVERFAST'S THIRD-PARTY LICENSORS, PROVIDERS AND SUPPLIERS, AS THIRD-PARTY BENEFICIARIES OF THIS AGREEMENT.

11.7 THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

12. INDEMNIFICATION.

You agree to defend, indemnify and hold harmless Everfast from and against all liabilities, costs and expenses, including reasonable attorneys' and experts' fees, related to or arising from your use of the Service (or the use of your Service by anyone else), (a) in violation of applicable laws, regulations or this Agreement; (b) to access the Internet or to transmit or post any message, information, software, images or other materials via the Internet; (c) in any manner that harms any person or results in the personal injury or death of any person or in damage to or loss of any tangible or intangible (including data) property; or (d) claims for infringement of any intellectual property rights arising from or in connection with use of the Service.

13. NOTICES.

Notices by you to Everfast required under this Agreement must be provided at the following address and are deemed given upon receipt by Everfast:

Everfast Fiber Networks LLC
Attn: Customer Service
9669 Lackman Rd.
Lenexa, KS 66219

With a copy to:

Everfast Fiber Networks LLC Attn: Legal Department at the same address

If you send us an email, you agree that the User ID and/or alias contained in the email is legally sufficient to verify you as the sender and the authenticity of the communication. Email communications to Everfast, however, do not constitute "notice" as contemplated by this Section 13.

Notices by Everfast to you (including notice of modifications to this Agreement under Section 2) are deemed given when: (a) transmitted to your primary email address on file; (b) mailed via the US mail, overnight courier or hand-delivered to your address on file; or (c) when posted to the Website.

14. GENERAL PROVISIONS.

14.1 All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination of this Agreement, including without limitation, those relating to Limitation of Liability and Indemnification, survive such termination.

14.2 Everfast will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes, work slow-downs or other labor-related activity, or an inability to obtain necessary equipment or services.

14.3 You may not assign or otherwise transfer this Agreement, or your rights or obligations under it, in whole or in part, to any other person. Any attempt to do so is void. We may freely assign all or any part of this Agreement with or without notice and you agree to make all subsequent payments as directed.

14.4 This Agreement must be interpreted, construed, and enforced in accordance with the laws of the state of Kansas, without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement. Each party hereby irrevocably consents to non-exclusive personal jurisdiction and venue in the state and federal courts located in the state in which the Service is provided to you with respect to any claim arising out of or related to this Agreement.

14.5 In any action or proceeding arising in connection with this Agreement, to the fullest extent allowed by law, the parties agree to waive their right knowingly, voluntarily, and intentionally to a jury trial and any right to pursue any claim related to this Agreement on a class or consolidated basis or in a representative capacity, to the maximum extent permitted by law.

14.6 Except as otherwise required by law, any cause of action or claim you may have with respect to the Service must be commenced within one year after the claim or cause of action arises or such claim or cause of action is barred.

14.7 Use, duplication or disclosure by any Government entity is subject to restrictions set forth, as applicable, in subparagraphs (a) through (c) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19, FAR 12.212, DFARS 227.7202, or in subparagraph (b)(1)(ii) of the Rights in Technical Data and Computer Software clause of DFARS (252) 227-7013, and in similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Everfast or its licensors and suppliers. The use of Software and documentation is further restricted in accordance with the terms of this Agreement.

14.8 Everfast's failure at any time to insist upon strict compliance with any of the provisions of this Agreement will not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement remain in full force and effect and the unenforceable portion will be construed as nearly as possible to reflect the original intentions of the parties.

14.9 This Agreement, including all policies referred to herein and posted on the Website, constitutes the entire agreement between you and Everfast with respect to the subject matter hereto and supersedes all prior or contemporaneous agreements whether written or oral. Changes by you to this Agreement are not

effective unless agreed to in a writing signed by an authorized representative of Everfast. References to “Everfast,” “we” and “us” and to “you,” “your” and “Customer” include our respective subsidiaries, affiliates, agents, employees, predecessors-in-interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of the Service under this Agreement or prior agreements between us or our predecessors-in-interest.

Attachment A

TERMS OF SERVICE FOR ANCILLARY INTERNET SERVICES

THESE TERMS AND CONDITIONS CONTAIN IMPORTANT INFORMATION REGARDING YOUR USE OF EVERFAST’S ANCILLARY INTERNET SERVICES.

PLEASE READ THEM CAREFULLY

If you subscribe to any of the following services, the terms of service below apply to your use of the service(s) in addition to the terms of the Terms of Service for Internet Service.

A. EMAIL AND EMAIL MESSAGING SERVICE.

1. Email Service. Use of any Everfast email service is subject to Everfast’s email and anti-spam policies, which include important information about limitations on use of the email service such as the storage capacity and deletion of stored messages.
2. Email Security. Everfast reserves the right in our sole discretion to provide the level of security we deem appropriate to safeguard our network and customers, and other Internet users, against Internet threats or abuses, including viruses, spam, and phishing threats. These security measures may include, but are not limited to, the use of firewalls and blocklists to block potentially harmful or abusive emails or attachments, anti-spam filters, anti-virus, and anti-spyware software, and blocking selected ports. Such activities may result in the blocking, filtering or non-delivery of legitimate and non-legitimate email sent to or from your email account. By using any Everfast-provided email service, you agree that delivery and receipt of email is not guaranteed and that Everfast may use such Internet and email security measures we in our sole discretion deem appropriate.
3. Email Aliases. Everfast will issue email aliases (alternate email addresses) based upon availability. You will surrender your alias by changing it or if your account is terminated for any reason and we will not forward emails addressed to that alias. If your Service is reinstated, we cannot guarantee your alias will still be available to you.