

## City of Cheney FAST Internet Service Terms and Conditions

### Article I. Introduction

- (a) Thank you for choosing the City of Cheney FAST Internet powered by Avista Edge™ for your Internet needs. These terms and conditions are important, so please read them carefully.
- (b) THE CITY OF CHENEY INTERNET TERMS AND CONDITIONS AND ALL DOCUMENTS REFERRED TO HEREIN (collectively, “**the Agreement**”) SET FORTH THE TERMS AND CONDITIONS BY WHICH SERVICE PROVIDER WILL MAKE AVAILABLE THE SERVICES CUSTOMER HAS ELECTED TO RECEIVE. THE AGREEMENT IS A BINDING LEGAL CONTRACT BETWEEN THE CUSTOMER (“**CUSTOMER**”) AND CITY OF CHENEY, WASHINGTON CODE CITY (“**SERVICE PROVIDER**”).
- (c) SERVICE PROVIDER RESERVES RIGHT TO MODIFY THE AGREEMENT AT ANY TIME.
  - (i) Such a modification is effective when SERVICE PROVIDER provides notice via email or U.S. Post.
  - (ii) CUSTOMER’S CONTINUED USE OF SERVICES AFTER CHANGES ARE POSTED CONSTITUTES CUSTOMER’S ACCEPTANCE OF THIS AGREEMENT AS MODIFIED BY THE POSTED CHANGES.
- (d) This Agreement takes effect upon CUSTOMER placing an order for service with the SERVICE PROVIDER or using the SERVICE PROVIDER’S services and shall continue until CUSTOMER’S services are terminated in accordance with this Agreement. The Agreement governs both the services provided to the CUSTOMER and any equipment or devices used in conjunction with those services (the “Equipment”), including but not limited to any devices or equipment provided by SERVICE PROVIDER as well as routers, computers, or mobile telephones possessed by CUSTOMER.

### Article II. Services

- (a) Subject to the characteristics of service contained herein, SERVICE PROVIDER shall provide Internet connections through SERVICE PROVIDER’S use of fixed wireless network services between the wireless Equipment provided by SERVICE PROVIDER and SERVICE PROVIDER’S Internet backbone (the “**Services**”). SERVICE PROVIDER shall have the unrestricted right to engage subcontractors in rendering Services.
- (b) SERVICE PROVIDER may offer different levels of the Services as set forth in [Description of Service and Fees](#) at <https://services.avistaedge.com>
- (c) Internet connections are provided as “up-to” speeds advertised within the service plan purchased by CUSTOMER reflecting performance under ideal conditions. SERVICE PROVIDER reserves the right to interrupt those speeds for Equipment upgrades and network maintenance, and will do its best to inform CUSTOMER of scheduled interruptions.
- (d) Performance Levels. Speed is a function of the traffic experienced upon the wider network architecture of the Internet. SERVICE PROVIDER does not guarantee the maximum Services performance (i.e., throughput speeds) levels.
- (e) SERVICE PROVIDER offers a range of service plans. Service plans are subject to availability and may include other promotional terms and conditions including a minimum service term commitment (“**Service Term**”). More information is available in the [Description of Service and Fees](#).
- (f) A Service Term shall begin on the date that the Services have been installed and activated by SERVICE PROVIDER and end on the date of termination.
- (g) Promotions. Any special offers may only be in effect for the initial Service Term of the plan. If CUSTOMER changes or upgrades service plan, any other special or promotions may be subject to discontinuance or removal.

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- (h) Service Availability. The Services are subject to availability as they are contingent on available SERVICE PROVIDER facilities and unique signal path conditions between such facilities and the CUSTOMER premises. The Services may also be impacted by a number of other factors outside the control of SERVICE PROVIDER, its subcontractors, and its affiliates, including Avista Edge, Inc. ("AE"). Coverage maps may provide more detail and can be found in the [Description of Service and Fees](#) at <https://services.avistaedge.com>.
- (i) SERVICE PROVIDER, its subcontractors and affiliates, including AE, are not liable for any claims, damages, losses or expenses arising out of or otherwise relating to the unavailability of the Services to the CUSTOMER, even where such unavailability occurs after installation of the Services.
  - (ii) Due to the nature of the Services technology, SERVICE PROVIDER reserves the right to deem the Services unavailable to the CUSTOMER from any cause by Service Provider or AE.
- (i) IP Addresses. CUSTOMER will receive any Internet Protocol ("IP") assignments as made by SERVICE PROVIDER'S Dynamic Host Configuration Protocol server. CUSTOMERS may also opt to manually set a static IP address, as well as custom IPv6 name servers, through the eero mobile application. CUSTOMER understands that IP assignments are not guaranteed, and may be modified as required by SERVICE PROVIDER and/or the American Registry for Internet Numbers.

### **Article III. Network Management**

- (a) CUSTOMER understands, acknowledges, and agrees that SERVICE PROVIDER may use various tools and techniques in order to efficiently and reasonably manage its networks. Such tools and techniques include software features that intelligently adapt itself to provide best performance to CUSTOMERS. These features include Wi-Fi Multimedia and Differentiated Services Code Point tagging which helps prioritize voice and video calls over regular traffic. Devices provided by the SERVICE PROVIDER are also equipped with additional bandwidth optimization technology that enables CUSTOMER'S connected devices to simply and fairly share your network's available bandwidth. Unlike traditional Quality of Service features that only allow specific devices to receive priority bandwidth at the expense of others, the features used by the SERVICE PROVIDER to manage its network work automatically across the whole system to enhance the overall internet experience at any given moment.
- (b) SERVICE PROVIDER has the right at all times and without notice to remove, restrict access to or make unavailable any information or content residing on its servers.

### **Article IV. Equipment**

- (a) Service Provider Equipment – As described below, SERVICE PROVIDER will provide equipment ("**Service Provider Equipment**") to the CUSTOMER for use with the Services.
- SERVICE PROVIDER will own the meter collar installed at CUSTOMER'S location, and will monitor and upgrade as SERVICE PROVIDER deems necessary and appropriate.
  - Any Service Provider Equipment can be provided to the CUSTOMER consistent with the terms in the [Description of Service and Fees](#).
- (b) Customer Equipment – With the exception of the meter collar, CUSTOMER also has the option to use compatible equipment not provided by the SERVICE PROVIDER and used in connection with the Services ("**Customer Equipment**"). It is the responsibility of the CUSTOMER to ensure that his/her Customer Equipment, including his/her computer system, meets the current

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minimum system requirements stated by SERVICE PROVIDER as being necessary to use the Services in the [Description of Service and Fees](#).

- (i) CUSTOMER understands, acknowledges, and agrees that from time to time, the computer equipment required to access and use the Services may change and consequently, CUSTOMER'S computer equipment may cease to be adequate to access the Services.
- (ii) At any point during the Service Term, if Customer Equipment falls short of the minimum standard requirements and/or does not allow use of the Services, CUSTOMER'S sole remedy will be to upgrade computer equipment or terminate this agreement.
- (iii) SERVICE PROVIDER does not guarantee Services if CUSTOMER uses hardware lower than the requirements stated by SERVICE PROVIDER as being necessary to use the Services in the [Description of Service and Fees](#).

### **Article V. Security**

- (a) CUSTOMER understands, acknowledges, and agrees that his/her use of use of software can expose CUSTOMER and CUSTOMER'S data to viruses and other security risks. CUSTOMER also understands, acknowledges, and agrees that, such use may also expose the SERVICE PROVIDER'S network to the same risks.
- (b) CUSTOMER assumes the risks associated with security, and will be solely responsible for maintaining and upholding the account security of his/her Services.
- (c) CUSTOMER is liable for any damage, impairment, restrictions or failure, acts or omissions caused to the network as a result of CUSTOMER's use of software and/or failure to properly maintain the account security of his/her Services and assumes the risk and responsibility for any actions, damages, or costs incurred via their account, regardless of who is using that account. In addition, SERVICE PROVIDER may immediately terminate CUSTOMER'S Services as a result of any damage, impairment, restrictions, failure, acts or omissions to the network by CUSTOMER'S acts or omissions.
- (d) CUSTOMER may subscribe at no additional charge to eero Secure in order to meet his/her obligations under the Agreement. eero Secure is governed by the provisions of an independent agreement between the CUSTOMER and Amazon eero. CUSTOMER may also choose to subscribe to additional eero services for additional fees with additional independent agreements.

### **Article VI. Copyright; Trademark; Unauthorized Usage of Device, Firmware, or Software**

- (a) The Services, any Equipment, firmware, or software used to provide the Services or provided to the CUSTOMER in conjunction with providing the Services, or embedded in the Equipment, and all Services, information, documents and materials on websites owned or operated by SERVICE PROVIDER and its subcontractors and affiliates, including AE, are protected by trademark, copyright, other intellectual property laws, and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "**Marks**") owned by SERVICE PROVIDER and its subcontractors and affiliates, including AE, are and will at all times remain the exclusive property of the respective entity.
- (b) Nothing in this Agreement grants CUSTOMER the right or license to use any Marks owned by SERVICE PROVIDER and its subcontractors and affiliates, including AE.
- (c) CUSTOMER has not been granted any license to use the firmware or software used to provide the Services or provided to the CUSTOMER in conjunction with providing the Services, or embedded in any Service Provider Equipment, other than a nontransferable, revocable license

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to use such firmware or software in object code form (without making any modification thereto) strictly in accordance with the terms and conditions of the Agreement. CUSTOMER expressly agrees that any Service Provider Equipment is exclusively for use in connection with the Services and that SERVICE PROVIDER will not provide any passwords, codes, or other information or assistance that would enable CUSTOMER to use such Equipment for any other purpose. CUSTOMER shall not reverse compile, disassemble, reverse engineer, or otherwise attempt to derive the source code from the binary code of the firmware or software. CUSTOMER shall not attempt to hack or otherwise disrupt the Services or make any use of the Services that is inconsistent with the intended purpose of the Services.

- (d) SERVICE PROVIDER reserves the right to prohibit the use of any interface equipment that SERVICE PROVIDER has not provided to the CUSTOMER. CUSTOMER hereby represents and warrants that CUSTOMER possesses all required rights, including software and/or firmware licenses, to use any interface equipment that SERVICE PROVIDER has not provided to CUSTOMER. In addition, CUSTOMER shall indemnify and hold SERVICE PROVIDER harmless against any and all liability arising out of CUSTOMER'S use of such interface equipment with the Services.
- (e) CUSTOMER shall not change the electronic serial number or equipment identifier of any Service Provider Equipment or perform a factory reset of any Service Provider Equipment without prior written consent from SERVICE PROVIDER. SERVICE PROVIDER reserves the right to terminate CUSTOMER'S Services if SERVICE PROVIDER believes, in SERVICE PROVIDER's sole and absolute discretion, that CUSTOMER has tampered with any Service Provider Equipment. In the event of such termination, CUSTOMER will remain responsible for any termination fees as provided for in this Agreement.

### **Article VII. Fees, Payment, and Billing**

- (a) Fees. Fees include, without limitation, set up or installation fees, monthly fees for the Services, monthly Equipment fees and other fees as set forth below.
  - (i) SERVICE PROVIDER will invoice fees for Services and any Service Provider Equipment in advance.
  - (ii) CUSTOMER agrees to pay all federal, state, local, or regulatory taxes and fees arising under this agreement.
- (b) Additional Fees. Additional fees may apply to all Services, including, but not limited to overage charges, unreturned Equipment fees, early termination fees, upgrade fees, insufficient funds fees, late fees, and reconnect fees as set forth in the [Description of Service and Fees](#) as it may be updated from time to time.
- (c) Credit Inquiries and Security Deposit. CUSTOMER AUTHORIZES SERVICE PROVIDER TO MAKE INQUIRIES AND TO RECEIVE INFORMATION ABOUT CUSTOMER'S CREDIT HISTORY AND TO ENTER THIS INFORMATION IN CUSTOMER'S FILE. Any risk assessments conducted by SERVICE PROVIDER or its third-party credit bureau will be done in conformance with the requirements of all applicable state or federal laws.
  - (i) SERVICE PROVIDER may require a security deposit before providing Services to the CUSTOMER. If CUSTOMER pays a deposit in connection with the Services and the state in which the Services are provided does not require interest to be paid on that deposit, SERVICE PROVIDER will not pay CUSTOMER any such interest.
  - (ii) If, during the Service Term, CUSTOMER fails to timely pay bills, SERVICE PROVIDER may impose additional measures to ensure payment, such as requiring prior payments or additional security. If CUSTOMER refuses to follow these required measures, SERVICE

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PROVIDER may terminate CUSTOMER'S Services and assess any applicable termination charge.

- (d) Payment Method and Timing. Payment by CUSTOMER shall be made in advance of delivery of the Services on a monthly basis. All terms including payment due dates and the late payment policy are as set forth in the [Description of Service and Fees](#).
  - (i) Accounts may be paid by electronic bank draft, money order, check or credit card.
  - (ii) A CUSTOMER account will be considered delinquent if payment is rejected for any reason or if any unpaid balance remains on the account.
- (e) Late Fees and Services Interruption/Disconnection. SERVICE PROVIDER shall charge CUSTOMER late and other applicable fees to recover the costs associated with late payment situations. These fees are in addition to all other fees.
  - (i) The late terms and associated charges are determined by the date payment is received by SERVICE PROVIDER and are as set forth in the [Description of Service and Fees](#).
  - (ii) The [Description of Service and Fees](#) also sets forth the time periods when CUSTOMER'S account will be interrupted or disconnected as a result of any outstanding balance. If SERVICE PROVIDER determines that Equipment is to be retrieved from CUSTOMER, SERVICE PROVIDER will contact CUSTOMER to inform that Equipment will be removed and retrieved.
  - (iii) Additionally, SERVICE PROVIDER may interrupt or disconnect CUSTOMER'S Services for non-payment and CUSTOMER shall be subject to a reconnect fee to resume Services.
  - (iv) For CUSTOMER to resume or reconnect Services, CUSTOMER'S account must be brought current.
  - (v) SERVICE PROVIDER may retain a collection agency to recover delinquent charges and fees.
- (f) Billing Disputes and Errors. CUSTOMER may dispute any invoiced charge by contacting SERVICE PROVIDER within thirty (30) days of the date of the disputed invoice. All invoiced charges shall be deemed correct and indisputable sixty (60) days after the date of the invoice on which they appear. CUSTOMER waives the right to dispute any charge after such period. SERVICE PROVIDER'S obligation with respect to any billing errors resulting in CUSTOMER'S overpayment for Services are limited to granting invoice credits equal to the dollar amounts erroneously billed, subject to the above limitation.
- (g) Fee Changes. CUSTOMER acknowledges and agrees that SERVICE PROVIDER has the right to change its service fees, additional fees, or add new fees at any time, upon notice to the CUSTOMER. Notwithstanding the foregoing, if CUSTOMER agrees to a service plan with a term of one (1) year or more, then CUSTOMER's base monthly service fees shall not be subject to change during the Service Term. Equipment fees and additional fees are still subject to change.

### **Article VIII. Installation and Access to Customer Premises**

- (a) SERVICE PROVIDER will provide installation services at the CUSTOMER premises following receipt of an agreement for Services and payment according to the Description of Service and Fees. CUSTOMER hereby consents to and authorizes installation of Service Provider Equipment, which may include modifications to the exterior of the CUSTOMER'S house.
- (b) If CUSTOMER is not the owner of the premises, upon request, CUSTOMER will supply SERVICE PROVIDER with the owner's name and address and written consent that CUSTOMER is authorized to grant access to the premises to install the Services as set forth herein.
- (c) Provision of installation services is contingent upon SERVICE PROVIDER obtaining a right of entry onto the premises.

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- (d) SERVICE PROVIDER and its subcontractors and affiliates, including AE, shall not be liable if access or right of entry to the premises is denied or limited for any reason.
- (e) CUSTOMER will not remove Service Provider Equipment from the premises or modify the Service Provider Equipment in any way. If CUSTOMER desires the meter collar be relocated from its original installation point, SERVICE PROVIDER may relocate the equipment for such charges as SERVICE PROVIDER may determine.

### **Article IX. Moving and Reconnection**

- (a) If CUSTOMER moves during the Service Term and desires to relocate the Services, CUSTOMER shall make a relocation request with SERVICE PROVIDER as provided in Article XIV, requiring CUSTOMER to provide necessary information, including requested date of Services termination, the address and phone number of the new location, the prospective move-in date, and the requested transfer of Services date.
  - (i) Upon CUSTOMER'S request, SERVICE PROVIDER may suspend all monthly fees from the requested termination date until Services relocation is completed. The maximum suspension period is provided in the [Description of Service and Fees](#).
- (b) Upon transfer of CUSTOMER'S account, CUSTOMER will continue to comply with all terms and conditions of the Agreement and the service plan to which he/she originally agreed. Billing cycle and Service Term will recommence upon activation of Services at the new location.
- (c) If SERVICE PROVIDER is unable to provide the Services to a new location, this Agreement shall terminate and CUSTOMER shall not be subject to any early termination fees, provided that (i) a SERVICE PROVIDER technician confirms that SERVICE PROVIDER is not able to provide service to the new address or (ii) proof is provided by CUSTOMER and confirmed by SERVICE PROVIDER that the new location is outside of SERVICE PROVIDER'S service area (e.g., copy of utility bill at new address).
- (d) If CUSTOMER does not provide SERVICE PROVIDER with sufficient information to process the relocation order thirty (30) days after Services termination date, the Agreement will be terminated, and any applicable early termination fees will apply.

### **Article X. Acceptable Use**

- (a) As a condition of use of the Services, CUSTOMER warrants to SERVICE PROVIDER that CUSTOMER will use the Services in accordance with the [Acceptable Use Policy](#) of SERVICE PROVIDER as it may be updated from time to time and which is available at <https://policy.avistaedge.com>.
- (b) The transfer of technology across national boundaries, including electronic transmission thereof, is regulated by the U.S. Government. CUSTOMER agrees not to export, import or re-export, (including, without limitation by way of electronic transmission) any technology transmitted through SERVICE PROVIDER Services without first obtaining any required export license or governmental approval. CUSTOMER agrees it will not directly or indirectly export or re-export such technology to any of those countries listed from time-to-time in supplements to Part 770 to Title 15 of the Code of Federal Regulations in Country Groups Q, S, W, Y, or Z. The parties acknowledge that the foregoing lists are subject to regulatory change from time to time.
- (c) SERVICE PROVIDER will cooperate fully with legal authorities in the investigation of suspected crimes or service abuses as required by law. CUSTOMER agrees to indemnify and hold harmless SERVICE PROVIDER, its agents and representatives, from any and all claims, costs, losses, damages, liabilities, and expenses, including reasonable attorney's fees for any reason

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whatsoever, including without limitation, any harm, injury, loss, or damage incurred by SERVICE PROVIDER, or any other party, arising out of CUSTOMER'S breach of this lawful use provision and/or SERVICE PROVIDER'S [Acceptable Use Policy](#).

### **Article XI. Privacy**

- (a) SERVICE PROVIDER has established a [Privacy Policy](#) that is available at <https://privacy.avistaedge.com>. The [Privacy Policy](#) governs data collection, use, disclosure, management, and security related to CUSTOMER's personal information, which may be updated from time to time.
- (b) By using the Services, CUSTOMER acknowledges that CUSTOMER accepts the practices and policies outlined in SERVICE PROVIDER'S [Privacy Policy](#). CUSTOMER'S continued use of the Services after notice of any changes to the Privacy Policy have been provided will indicate CUSTOMER'S acceptance of such changes.

### **Article XII. Customer Obligations; Equipment Theft, Damage, and Responsibility**

- (a) CUSTOMER shall be solely responsible for independent backup of any data files residing on SERVICE PROVIDER computers or networks.
- (b) CUSTOMER shall notify SERVICE PROVIDER immediately if any Equipment is stolen, damaged, missing, inoperable or CUSTOMER'S Services are being stolen, accessed fraudulently, or otherwise being used in an unauthorized manner.
  - (i) When notifying SERVICE PROVIDER, CUSTOMER shall provide the account number and a detailed description of the circumstances affecting the use of Services. Failure to timely inform SERVICE PROVIDER may result in the termination of CUSTOMER'S Services and additional charges.
  - (ii) CUSTOMER will be liable for damage, loss and cost of repair or replacement of Equipment that is caused by CUSTOMER's acts or omissions. CUSTOMER shall, upon discovery, notify the SERVICE PROVIDER that Equipment is damaged, missing, inoperable or removed.
- (c) CUSTOMER will be wholly liable for content transmitted by CUSTOMER or by any person, whether authorized or unauthorized, using CUSTOMER'S Services or Equipment. CUSTOMER shall assure that all use of the Services and content comply at all times with all applicable laws, regulations, and written and electronic policies or instructions for use, including, without limitation, the [Acceptable Use Policy](#).
- (d) SERVICE PROVIDER reserves the right to terminate and/or suspend CUSTOMER'S Services if SERVICE PROVIDER determines, in its sole and absolute discretion, that CUSTOMER'S use of the Services (i) does not conform to the requirements set forth in the Agreement or (ii) interferes with SERVICE PROVIDER'S ability to provide Services to CUSTOMER or others.
- (e) SERVICE PROVIDER action or inaction under this Section will not constitute any review or approval of CUSTOMER'S use or content.

### **Article XIII. Indemnification**

- (a) CUSTOMER has been advised and acknowledges that the Internet may contain information, materials, and language that may be deemed adult in nature and inappropriate or offensive. The CUSTOMER is responsible for all information received, transmitted, and/or stored by the

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CUSTOMER. The CUSTOMER hereby releases SERVICE PROVIDER from all liability relating to such information, materials and language and agrees to indemnify SERVICE PROVIDER, its officers, directors, agents and employees, as well as its subcontractors and affiliates, including AE, against any and all claims, losses or expenses relating to such information, materials and language. This indemnification shall survive any termination of the Agreement.

- (b) CUSTOMER agrees to defend, indemnify, and hold SERVICE PROVIDER, its officers, directors, agents and employees, as well as its subcontractors and affiliates, including AE, harmless from any claims, losses and damages, including attorney's fees, resulting from CUSTOMER'S violation of any of the provisions of this Agreement or CUSTOMER'S placement or transmission of any materials or content onto SERVICE PROVIDER servers or through its network, or from any and all use of CUSTOMER'S account, with or without CUSTOMER'S knowledge or consent, or from all claims, damages, fines, penalties, costs, and expenses (including, without limitation, attorney's fees) related to any action taken by SERVICE PROVIDER as part of SERVICE PROVIDER investigation of a suspected violation of the Agreement or as a result of its conclusion that a violation of the Agreement has occurred, or to CUSTOMER'S use of or inability to use SERVICE PROVIDER Services, Equipment, bundled software, Internet, or VoIP. This indemnification shall survive any termination of the Agreement.

### **Article XIV. Customer Service and Complaint Resolution**

- (a) SERVICE PROVIDER seeks to provide quality services to CUSTOMER. CUSTOMER may provide views or ideas related to the Services by contacting SERVICE PROVIDER. Customer service and complaint resolution is available through the following:
- (i) At the website <https://cheney.avistaedge.com> which provides access to the customer service portal and customer service chat function;
  - (ii) Via the eero application;
  - (iii) By phone at 509-408-1515; or
  - (iv) At the email address [support@avistaedge.com](mailto:support@avistaedge.com).

### **Article XV. Cancellation; Termination; Change in Services by Customer**

- (a) CUSTOMER must notify SERVICE PROVIDER to cancel the Services by any one of the following methods: (i) calling SERVICE PROVIDER customer service at 509-408-1515; (ii) via the website portal at <https://cheney.avistaedge.com> (iii) emailing customer service at [support@avistaedge.com](mailto:support@avistaedge.com); (iv) or via the eero application.
- (b) CUSTOMER may cancel Services without receiving an invoice or being charged a processing fee before Services have been activated.
- (c) During the first thirty (30) days of service, if there are service or quality issues that SERVICE PROVIDER is not able to fix, CUSTOMER may cancel the Services and receive a full refund.
- (d) CUSTOMER may terminate the Services upon notice via the above methods to SERVICE PROVIDER. Termination is effective within forty-eight (48) hours of the date CUSTOMER contacts SERVICE PROVIDER. CUSTOMER'S remaining obligations after termination include payment of fees.
- (i) SERVICE PROVIDER will not refund paid charges, including partial months if CUSTOMER cancels Services before the end of a billing cycle. THERE WILL BE NO PRO-RATED REFUNDS OR CREDITS FOR ANY PARTIAL-MONTH PERIODS REMAINING AFTER THE TERMINATION DATE.



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- (ii) If CUSTOMER agreed to a Service Term and Services are terminated prior to the end of the Service Term, CUSTOMER WILL BE SUBJECT TO AN EARLY TERMINATION FEE as set forth in the [Description of Service and Fees](#).
- (e) At the discretion of the SERVICE PROVIDER, if CUSTOMER changes or upgrades the service plan, any applicable prior Service Term will be terminated and CUSTOMER will begin a new Service Term as applicable to the new service plan. Such changes or upgrades may be subject to an upgrade fee as set forth in the [Description of Service and Fees](#). Upon a change or upgrade to a service plan, any special or other promotions applied to CUSTOMER'S account may be subject to discontinuance or removal if such promotion is no longer available.
- (f) Upon any change in Services, including termination and cancellation, CUSTOMER must comply with the SERVICE PROVIDER'S instructions, if any, provided via the eero application to include relinquishing Service Provider Equipment within thirty (30) days of cancellation or termination of Services. CUSTOMER agrees to pay SERVICE PROVIDER the fees as set forth in the [Description of Service and Fees](#) until return of Service Provider Equipment, CUSTOMER bears risk of loss between termination and relinquishment of Equipment.
- (g) Termination of the Services does not affect CUSTOMER'S obligations under the Agreement, including CUSTOMER'S obligation to pay all fees for Services rendered prior to termination and any termination, processing, and administration fees incurred as a result of such termination. SERVICE PROVIDER accounts must be paid in full before a cancellation will be considered complete.

### **Article XVI. Termination and Suspension by Service Provider**

- (a) SERVICE PROVIDER may initiate legal action, suspend, and/or terminate Services immediately if, as determined in the sole discretion of SERVICE PROVIDER, CUSTOMER (i) engages in inappropriate use or abuse of the Services or (ii) violates any of the provisions of the Agreement, including but not limited to SERVICE PROVIDER'S Acceptable Use Policy.
- (b) SERVICE PROVIDER may unilaterally terminate or suspend an account at any time for any reason by providing written notice to CUSTOMER at least thirty (30) days prior to the termination date. SERVICE PROVIDER is not required to provide a reason for termination under this provision.
- (c) Inappropriate use or abuse of Services by others can be traced, documented, and reported to appropriate authorities and may be prosecuted to the fullest extent of the law.
- (d) If CUSTOMER'S Services are terminated by SERVICE PROVIDER for any reason, CUSTOMER will remain fully liable and responsible to pay all assessed or outstanding fees to SERVICE PROVIDER plus all costs SERVICE PROVIDER incurs to collect such amounts, including, without limitation, collection costs and attorney's fees.

### **Article XVII. Warranty**

- (a) CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES AND ANY EQUIPMENT IS AT CUSTOMER'S SOLE RISK.
- (b) STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICES OR DEVICE, IF ANY, BY SERVICE PROVIDER OR SERVICE PROVIDER'S AGENTS OR INSTALLERS, WHETHER ORAL OR WRITTEN, ARE INFORMATIONAL ONLY AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.
- (c) THE SERVICES AND ANY EQUIPMENT PROVIDED TO THE CUSTOMER BY SERVICE PROVIDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND,

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WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY.

- (d) SERVICE PROVIDER DOES NOT WARRANT:
- (i) THE UNINTERRUPTED, TIMELY OR SECURE USE OF THE SERVICES;
  - (ii) THAT THE FUNCTIONS CONTAINED IN THE SERVICES OR ANY EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS;
  - (iii) THAT THE SERVICES WILL BE ERROR-FREE OR FREE OF ANY VIRUSES, WORMS, SPAM, POP-UP ADVERTISING, SPYWARE, ADWARE OR OTHER HARMFUL COMPONENTS; OR
  - (iv) THAT ANY PERSONAL INFORMATION, NON PERSONAL INFORMATION, DATA OR FILES CUSTOMER SENDS OR RECEIVES VIA THE SERVICES WILL BE TRANSMITTED IN UNCORRUPTED FORM, WITHIN A REASONABLE TIME, OR FREE FROM UNAUTHORIZED ACCESS BY OTHERS OR THAT OTHER CUSTOMERS WILL BE UNABLE TO GAIN ACCESS TO CUSTOMER'S COMPUTER OR DEVICE.
- (e) LIMITED WARRANTY – SERVICE PROVIDER TO USE REASONABLE EFFORTS
- (i) SERVICE PROVIDER WARRANTS THAT IT WILL USE REASONABLE EFFORTS TO RENDER SERVICES PURSUANT TO THIS AGREEMENT IN A TIMELY, PROFESSIONAL, AND WORKMANLIKE MANNER IN ACCORDANCE WITH TIMELINES ESTABLISHED HEREIN. SERVICE PROVIDER DOES NOT WARRANT, HOWEVER, THAT YOUR USE OF ANY SERVICES WILL BE UNINTERRUPTED OR THAT THE OPERATION OF THE SERVICES WILL BE ERROR-FREE OR SECURE.
  - (ii) ANY CLAIM FOR BREACH OF THE FOREGOING WARRANTY MUST BE BROUGHT WITHIN SIXTY (60) DAYS AFTER CUSTOMER'S ACTUAL DISCOVERY OF ANY DEFECT AND PRIOR TO THE EXPIRATION OF SIX (6) MONTHS FROM THE DATE THE APPLICABLE SERVICES WERE RENDERED. SERVICE PROVIDER WILL HAVE NO LIABILITY FOR ANY CLAIM MADE AFTER SUCH TIME.
  - (iii) THIS IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY SERVICE PROVIDER.
  - (iv) SERVICE PROVIDER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY IN CASE OF BREACH OF THIS WARRANTY SHALL BE, AT SERVICE PROVIDER'S SOLE OPTION, EITHER:
    - 1) RETURN OF ALL OR A PORTION OF FEES PAID FOR CURRENT MONTH; OR
    - 2) REPLACEMENT/REPAIR.
  - (v) THIS LIMITED WARRANTY SHALL IMMEDIATELY BE TERMINATED IF:
    - 1) ANY UNAUTHORIZED MODIFICATIONS ARE MADE TO THE EQUIPMENT OR SERVICES BY CUSTOMER DURING THE WARRANTY PERIOD;
    - 2) ANY SERVICES, EQUIPMENT, OR PRODUCTS ARE SUBJECT TO ABUSE, ACCIDENT, IMPROPER USE; OR
    - 3) CUSTOMER BREACHES THE TERMS OF THIS AGREEMENT.
- (f) OTHER THAN WARRANTIES AS TO THE DEVICE EXPRESSLY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE AND THE RETAIL CUSTOMER LIMITED WARRANTY EXPRESSLY SET FORTH THEREIN, SERVICE PROVIDER AND ITS SUBCONTRACTORS AND AFFILIATES, INCLUDING AE, MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN REGARDS TO THE DEVICE OR EQUIPMENT, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR ANY WARRANTY THAT THE DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY

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DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE DEVICE.

**Article XVIII. Limitation of Liability; Disclaimer of Liability**

- (a) TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SERVICE PROVIDER OR ITS SUBCONTRACTORS OR ITS AFFILIATES, INCLUDING AE, OR EACH OF THEIR RESPECTIVE MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, REPRESENTATIVES, CONTRACTORS, OR AGENTS, OR ANY OF THEIR SUCCESSORS AND ASSIGNS BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY WITH RESPECT TO THE SERVICES OR THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY.
  - (i) IN ANY EVENT, INCLUDING SITUATIONS IN WHICH ANY PART OF THIS LIMITATION ON LIABILITY IS FOUND TO BE INVALID OR UNENFORCEABLE FOR ANY REASON, THE AGGREGATE LIABILITY (AND DAMAGES) OF THE SERVICE PROVIDER AND ANY THIRD PARTY LISTED ABOVE SHALL NOT EXCEED THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD.
- (b) ADDITIONALLY, SERVICE PROVIDER WILL HAVE NO LIABILITY FOR THE FOLLOWING:
  - (i) ANY AMOUNT IN EXCESS OF THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD;
  - (ii) ANY THIRD-PARTY FEES OR CHARGES, INCLUDING BUT NOT LIMITED TO, TAXES, BANKING FEES, OVERDRAFT FEES, MOBILE PHONE OR OTHER WIRE LINE CHARGES, TECHNICIAN CHARGES, OR OTHER SIMILAR CHARGES;
  - (iii) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER;
  - (iv) DATA LOSS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES;
  - (v) DAMAGES OR LOSS DUE TO CUSTOMER'S FAILURE TO BACK UP ANY EQUIPMENT OR ANY LACK OR BREACH OF SECURITY THAT CUSTOMER OR ANY OTHER PARTY MAY EXPERIENCE OR BE EXPOSED TO WHILE USING THE SERVICES;
  - (vi) CUSTOMER'S USE OF THE SERVICES FOR, OR IN CONNECTION WITH, ANY HIGH-RISK OR UNLAWFUL USES, OR ANY USE THAT VIOLATES THIS AGREEMENT; OR
  - (vii) ANY MATTER BEYOND SERVICE PROVIDER'S REASONABLE CONTROL.
- (c) SERVICE PROVIDER WILL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICES AT ANY TIME, OR FROM TIME TO TIME, OR ANY INTERRUPTION OR DEGRADATION OF VOICE QUALITY THAT IS CAUSED BY ANY OF THE FOLLOWING:
  - (i) AN ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR OTHER THIRD PARTY;
  - (ii) EQUIPMENT, NETWORK, OR FACILITY FAILURE;
  - (iii) EQUIPMENT, NETWORK, OR FACILITY UPGRADE OR MODIFICATION;
  - (iv) FORCE MAJEURE EVENTS SUCH AS (BUT NOT LIMITED TO) ACTS OF GOD, ACTS OF NATURE, STRIKES, FIRE, WAR, RIOT, ACTS OF TERRORISM, AND GOVERNMENT ACTIONS;
  - (v) EQUIPMENT, NETWORK, OR FACILITY SHORTAGE;
  - (vi) EQUIPMENT OR FACILITY RELOCATION;
  - (vii) SERVICES, EQUIPMENT, NETWORK, OR FACILITY FAILURE CAUSED BY THE LOSS OF POWER TO THE CUSTOMER;
  - (viii) OUTAGE OF, BLOCKING OF, OR INTERRUPTION OF PORTS BY CUSTOMER'S ISP OR BROADBAND SERVICE PROVIDER, OR OTHER IMPEDIMENT TO USAGE OF THE SERVICES CAUSED BY ANY THIRD PARTY;

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- (ix) ANY ACT OR OMISSION BY CUSTOMER OR ANY PERSON USING THE SERVICES OR DEVICE PROVIDED TO THE CUSTOMER; OR
  - (x) ANY OTHER CAUSE THAT IS BEYOND SERVICE PROVIDER'S CONTROL INCLUDING, WITHOUT LIMITATION, A FAILURE OF OR DEFECT IN ANY DEVICE, THE FAILURE OF AN INCOMING OR OUTGOING COMMUNICATION, OR THE INABILITY OF COMMUNICATIONS TO BE CONNECTED, COMPLETED, OR FORWARDED.
- (d) AGGREGATE LIABILITY OF THE SERVICE PROVIDER OR ANY OF THE THIRD PARTIES LISTED ABOVE WILL IN NO EVENT EXCEED THE SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD. THE MAXIMUM PERIOD SHALL NOT EXTEND FURTHER THAN TWELVE (12) MONTHS PRIOR TO THE INCIDENT GIVING RISE TO A CLAIM AGAINST THE SERVICE PROVIDER OR ANY THIRD PARTY LISTED ABOVE.

### **Article XIX.**    Miscellaneous

- (a) Relationship. CUSTOMER's relationship with SERVICE PROVIDER is that of an independent contractor. CUSTOMER is not an agent of SERVICE PROVIDER or its subcontractors and affiliates, including AE.
- (b) Third Party Beneficiaries. No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action, or creates any other third-party beneficiary rights.
- (c) Survival. The provisions of this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall survive.
- (d) Transferability and Assignment: CUSTOMER shall not sell, transfer, or assign this agreement. CUSTOMER'S account and right to use SERVICE PROVIDER Services and system are not transferable without SERVICE PROVIDER'S prior written consent. CUSTOMER agrees to be solely responsible for the protection and security of CUSTOMER'S password and account information, including the responsibility to protect his/her password and account and to keep them secure from unauthorized use.
- (e) Notices. CUSTOMER must provide cell phone contact information and email address to SERVICE PROVIDER at or prior to activation. Notifications from SERVICE PROVIDER to be sent at its sole discretion by any or all of the following: voice call or message to cell phone, written notice to mailing address and electronic notice via text message, email, and/or the eero application. Notice shall be effective: upon receipt or refusal of delivery when deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid; at the time a voice call or message is made by SERVICE PROVIDER to the cell phone contact information of CUSTOMER on record; at the time a text message is sent to that same cell phone on record; upon receipt by Customer of an email sent to the account of CUSTOMER on record (or upon the second bounce back notification sent to SERVICE PROVIDER following an attempt to email that same account); or when sent via the eero application, by a telefax, email, or a nationally recognized overnight delivery service to the address of CUSTOMER set forth on SERVICE PROVIDER'S records or such other address provided for such purposes. Notifications from CUSTOMER shall be effective upon receipt or refusal of delivery when provided as described in Article XIV. CUSTOMER is responsible for providing all necessary current contact information to SERVICE PROVIDER.
- (f) Proprietary Rights. SERVICE PROVIDER grants CUSTOMER a non-exclusive, non-transferable license to use the products and Services provided hereunder. All titles and property rights, including all intellectual property rights to such products and Services, are and shall remain with SERVICE PROVIDER and AE, whether or not they are embedded in any product. CUSTOMER

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recognizes that the Equipment, products and Services used hereunder constitute valuable trade secrets of SERVICE PROVIDER, and CUSTOMER shall use their best efforts to protect and keep confidential any and all products and Services used by CUSTOMER and shall not attempt to copy, examine, in any way alter, or reengineer, reverse engineer, tamper with, or otherwise misuse such products and Services.

- (g) Jurisdiction/Venue/Choice of Law. CUSTOMER agrees that exclusive jurisdiction for any claim or dispute with SERVICE PROVIDER or relating in any way to CUSTOMER'S account or CUSTOMER'S use of the Services resides in the courts of Washington and that this Agreement shall be governed by Washington law. CUSTOMER expressly consents to the exercise of personal jurisdiction in the courts of Washington in connection with any such dispute. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement or compel performance thereof, the substantially prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.
- (h) Amendments. SERVICE PROVIDER may modify this Agreement from time to time, and CUSTOMER'S continued use of the Services following notice of such modification shall be deemed to be CUSTOMER'S acceptance of such modification. If CUSTOMER does not agree to any modification of this Agreement, CUSTOMER must immediately stop using the Services and notify SERVICE PROVIDER of CUSTOMER'S desire to cancel the Services.
- (i) Information. CUSTOMER hereby acknowledges that SERVICE PROVIDER and its affiliates, including AE, may retain and use any information, comments, or ideas conveyed by CUSTOMER relating to the Service, including any Equipment, products, and services made available on or through the Services. This information may be used to provide CUSTOMER with better service. SERVICE PROVIDER may open and maintain a Customer file.
- (j) Entire agreement. This Agreement, including the service quote and any and all other documents and SERVICE PROVIDER policies referenced herein, constitutes the entire agreement between SERVICE PROVIDER and CUSTOMER pertaining to the subject matter hereof. SERVICE PROVIDER'S failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right.
- (k) Severability. In the event that it is determined by a court of competent jurisdiction as a part of a final non-appealed judgment that any provision of this Agreement (or part thereof) is void, invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of the Agreement will remain in full force and effect.

### **Article XX. Acceptance**

- (a) CUSTOMER represents and warrants to SERVICE PROVIDER that CUSTOMER is of lawful age and that (i) CUSTOMER has the full right, power, and authority to enter into this agreement and to perform the acts required of CUSTOMER hereunder; and (ii) the acceptance of this agreement by CUSTOMER, and the performance by CUSTOMER of its obligations and duties hereunder, do not and will not violate any law or agreement to which CUSTOMER is a party or by which it is otherwise bound.
- (b) By ordering or using Services from SERVICE PROVIDER, CUSTOMER accepts this agreement and acknowledges that they have read and understand the terms and conditions of this agreement and agrees to be legally bound by all of the terms and conditions of this Agreement and any associated documents, the same as if CUSTOMER had physically signed this Agreement. This Agreement supersedes all other written and oral communications or agreements with regard to the subject matter. Any waiver, modification or variation of any term or condition of this

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agreement shall only be effective if in writing by the SERVICE PROVIDER and/or in the form of a business contract signed by an authorized officer of SERVICE PROVIDER.

- (c) By providing SERVICE PROVIDER with CUSTOMER'S telephone number, cell phone number(s), or email address, CUSTOMER gives consent for SERVICE PROVIDER, or any of SERVICE PROVIDER'S agents (including collection agents), to contact CUSTOMER at these numbers or email address, or any other phone number or email address that is later acquired for CUSTOMER, and to leave live or pre-recorded messages, text messages, or emails to the extent that such are necessary to enforce any part of this Agreement. For greater efficiency, calls may be delivered by an auto-dialer.
- (d) BY CUSTOMER'S ORDERING AND ACCEPTANCE OF THE SERVICES, OR CUSTOMER'S USE AND ACCEPTANCE OF THE SERVICES, CUSTOMER IS INDICATING THAT CUSTOMER HAS READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.