



## MUTUAL NONDISCLOSURE AGREEMENT

Company legal name: \_\_\_\_\_

Company's state of incorporation: \_\_\_\_\_

Complete mailing address of Company's principal office: \_\_\_\_\_

This Mutual Nondisclosure Agreement (the "Agreement") is between New Edge Network, Inc., an EarthLink company, doing business as New Edge Networks ("NEN"), a Delaware corporation with its principal offices located at 3000 Columbia House Blvd., Suite 106, Vancouver, WA 98661, and the business entity identified above ("Company"). This Agreement is effective as of the last date on which it is executed (the "Effective Date"). Both NEN and Company are referred to herein individually as a "Party" and collectively as the "Parties."

**1. Definition.** "Confidential Information" shall mean any and all information of or concerning a Party obtained by the other Party or to which such other Party has direct or indirect access, whether marked as confidential or not, in any form, format or media, including information obtained from oral or other transitory means, unless expressly and specifically indicated at the time of disclosure to be non-confidential. Confidential Information shall include but is not limited to: (a) patentable subject matter and patent applications; (b) trade secrets; (c) the terms of any agreement between the Parties, except to the extent otherwise stated in such agreement; (d) any information that is marked confidential, restricted, proprietary, or with a similar designation; and (e) proprietary information such as IP addressing data, routing protocols and tables, router configuration syntax, specifications, processes, methods, ideas, techniques, drawings, works of authorship, inventions, know-how, software, algorithms and formulae related to the current, future, and proposed products and services of each of the Parties, including without limitation information concerning research, development, financials, procurement, customer lists, investors, employees, third party relationships, forecasts and marketing plans.

**2. No Warranty.** Each Party (i) acknowledges that neither makes any representation or warranty (express or implied) as to the accuracy or completeness of any Confidential Information, (ii) agrees to assume full responsibility for all conclusions it may derive from the Confidential Information, and (iii) expressly disclaims any and all liability that may be based, in whole or in part, on any Confidential Information, errors therein or omissions there from, except as contained in any agreement establishing a business relationship between the Parties.

**3. Exclusions.** Notwithstanding the foregoing, Confidential Information shall exclude information that: (i) was lawfully in the public domain at the time of disclosure; (ii) lawfully becomes part of the public domain after disclosure through no fault of the recipient Party; (iii) was received after disclosure to the recipient Party from a third party who had a lawful right to disclose such information without any obligation to restrict its further use or disclosure; or (iv) was developed by employees or agents of the recipient Party independently of and without exposure to any Confidential Information of the other Party.

**4. Limited Right to Use.** Except as otherwise approved in writing, each Party shall: (i) hold and maintain the other Party's Confidential Information in strict confidence, exercising no less than reasonable care; (ii) not disclose such Confidential Information to any third party; and (iii) use the Confidential Information for no purpose other than evaluating or pursuing a business relationship with the other Party. Each Party shall immediately notify the other upon discovery of any loss or unauthorized disclosure of the Confidential Information of the other Party. Confidential Information may not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information shall remain the property of the disclosing Party and shall contain any and all confidential or proprietary notices or legends that appear on the original. Nothing herein shall be construed as granting any property, license or use rights to any Confidential Information and neither Party shall make, have made, market, use or sell any product or service using, incorporating, relying on, or derived from any Confidential Information of the other Party. Each Party agrees that any software of the other Party contains valuable Confidential Information and agrees not to modify, reverse engineer, decompile, create other works from, or disassemble any such software of the other Party without the prior written consent of such other Party. Neither Party shall communicate any information to the other in violation of the communicating Party's confidentiality obligations to a third party, and neither Party shall knowingly communicate any

information to the other in violation of the proprietary rights of any third party. Each Party shall only permit access to Confidential Information of the other Party to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed.

**5. Term.** The term of this Agreement shall commence upon the Effective Date and continue for three years thereafter, except that the Recipient's obligations with respect to particular Confidential Information disclosed shall survive for a period of two (2) years from the date of disclosure. At any time, upon the written request of a Party, the other Party shall promptly return to the requesting Party or destroy all documents and other tangible materials representing or embodying the other's Confidential Information and all copies thereof, and shall immediately cease any further use thereof. Upon the written request of a Party, the other Party shall furnish a certificate executed by an officer of such Party attesting to the complete return or destruction of Confidential Information of the requesting Party.

**6. Export.** Neither Party shall export, directly or indirectly, any technical data acquired from the other Party pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining any required license or approval and the other Party's prior written consent.

**7. Compelled Disclosure.** If a recipient Party becomes compelled by lawful process (such as interrogatories, subpoenas, or civil investigative demands) to disclose any of the disclosing Party's Confidential Information, the recipient Party so compelled shall provide the disclosing Party with prompt written notice so that the disclosing Party may seek a protective order or other appropriate remedy, or both, or waive compliance with the provisions of this Agreement. If the disclosing Party fails to obtain a protective order or other appropriate remedy, the compelled recipient Party shall furnish only that portion of the Confidential Information which it is advised by written opinion of its counsel is legally required to be furnished and shall exercise all reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded such Confidential Information.

**8. Notices.** All notices required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth above or to such other address as either Party may specify in writing.

**9. Injunctive Relief.** Each Party acknowledges that breach of this Agreement will cause irreparable harm to the other and hereby agrees that the other Party shall be entitled to seek injunctive relief under this Agreement for such breach or threatened breach, as well as such further relief as may be granted by a court of competent jurisdiction.

**10. General.** This Agreement shall be governed by the internal laws of the State of Washington, without regard to its choice of law principles. Neither Party may assign, transfer, delegate or sublicense any rights or obligations under this Agreement without the prior written consent of the other Party. This Agreement shall benefit and be binding upon the parties hereto and their respective successors. This Agreement is the entire and complete Agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements or understandings between the Parties, whether written or oral, and may not be modified in any way unless by means of written addendum, signed and dated by duly authorized representatives of both Parties. If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect and the Parties shall immediately begin negotiations to replace any invalid or unenforceable portions that are essential parts of this Agreement. If either Party fails to enforce any right or remedy hereunder, such failure shall not be deemed a waiver of such right or remedy.

**In Witness Whereof**, the Parties have executed this Agreement by their authorized representatives named below.

<b>New Edge Network, Inc.</b>	COMPANY:	_____
By: _____	By:	_____
Title: _____	Title:	_____
Printed Name: _____	Printed Name:	_____
Date: _____	Date:	_____