



EarthLink Business Terms of Service

Applicable to DSL, T-1, Enterprise T-1 and DS-3 Metro Services
Ordered for a single service location

1. **Agreement.** These Terms of Service and your Service Order together form an agreement (**Agreement**) between New Edge Network, Inc., an EarthLink Business company and Delaware corporation, doing business as New Edge Networks and/or EarthLink Business (**EarthLink Business**) and your company identified in your order (**Customer**). Hereinafter, EarthLink Business or Customer may be referred to as a "Party" and together as the "Parties." This Agreement governs your company's order and use of the DSL, T-1, or Enterprise T-1 or DS3 Metro Service (each a **Service**) ordered on-line. EarthLink Business recommends that you print out a copy of these Terms of Service and retain the copy for your records.
2. **Agreement Term.** The term of the Agreement shall commence upon the submission of Customer's Service Order and shall continue until Service is terminated pursuant to the Agreement, except that provisions of this Agreement that by their nature are intended to survive termination or expiration of this Agreement shall so survive.
3. **Service Descriptions.**
 - A. **Broadband Internet Access Services.**
 - 1) **Business DSL Line Services.** These SDSL and IDSL Services include Internet access and enable the transmission of data over separate line copper facilities installed at the Service location by EarthLink Business. "Up to" transmission rates for these Services are listed on the Service order.
 - 2) **Business, Business Plus, and Enterprise T-1-Core Services.** These Services, which are further described below, include dedicated Internet access and the following features:
 - a) Business T-1 Service. This Service enables symmetrical transmissions of data over copper facilities installed at the Service location as part of the Service and is delivered with an unspecified bit rate quality of service up to 1.5 Mbps.
 - b) Business Plus T-1Service. This Service enables symmetrical transmissions of data over copper facilities utilizing ATM or frame relay protocol and installed at the Service location as part of the Service. This Service is delivered with a variable bit rate quality of service with 50% committed information rate up to 1.5 Mbps.
 - c) Enterprise T-1 – Core Service. This Service enables symmetrical transmissions of data over copper facilities utilizing ATM protocol and installed at the Service location as part of the Service. This Service is delivered with a 100% committed information rate up to 1.5 Mbps.
 - 3) **Available Features.** The following features may be chosen at the time of ordering for all

Broadband Internet Access Services described above:

- 5 email addresses.
- 100MB of mailbox storage per email address.
- Virus Blocker—automatically scans incoming email messages for viruses before you download them to your computer. (product page - <http://www.earthlink.net/software/free/virusblocker/>).
- Spam Blocker-blocks virtually 100% of all junk email. (product page - <http://www.earthlink.net/software/free/spamblocker/>).
- EarthLink Web Mail—check your email from any computer with an Internet connection. (link - <https://webmail.earthlink.net/>).
- 10MB of free webspace for each email address.
- Free Site Builder—create and publish your own Web site in minutes with our easy-to-use tool.

B. Enterprise T-1 Metro and DS-3 Metro Services. These Services are available only in U.S. metropolitan regions and include dedicated Internet access. Each of these Services enables symmetrical transmission of data (up to 1.5 Mbps for T-1 and up to 45 Mbps for DS-3) over copper facilities utilizing HDLC protocol and installed at the Service location as part of the Service. A basic business firewall is configured in the EarthLink Business CPE provided for use with this Service.

C. Ethernet Service. This service enables symmetrical transmission of data (up to the speed indicated on the Service Order Form) over optical or copper facilities and installed at the Service location as part of the Service. This service is available in the United States and includes dedicated Internet access.

4. **Installation Specifications.** EarthLink Business shall provide electronic notice of Service installation to a contact specified by the Customer. Installation specifications and applicable non-recurring charges (“NRC”s) are listed in the non-recurring charges chart in the Pricing section below. Other applicable charges may appear on the Customer’s Service Order Form.

- a. Basic Installation.** Basic Installation for all Services at a particular Service location will be deemed complete upon EarthLink Business’s provisioning and service activation of the Service local access circuit to the local telephone company demarcation point (DEMARC) at the Service location.
- b. Self Installation.** Self-installation of Service will be deemed complete upon the provisioning of the local access circuit to the Minimum Point of Entry (MPOE)/DEMARC at the Service location, after delivery of EarthLink Business provided CPE, if applicable, and electronic notification to Customer that Service has been delivered for that Service location. Self installation is not available for all Services. As an alternative, Customer may order Professional or Custom In-Suite Installation. If EarthLink Business CPE is returned to EarthLink Business as undeliverable, EarthLink Business will attempt to verify the correct Service location (or other Customer provided) shipping address and will then send the EarthLink Business CPE to that address. If EarthLink Business, using reasonable efforts, is unable to successfully deliver the CPE to a Service location on the second attempt, EarthLink Business will cancel Customer’s order for Service at that Service location and so inform Customer and the order cancellation fee will apply. Customer’s post-delivery misplacement or loss of EarthLink Business CPE will not interrupt the billing for the Service and Customer will be responsible for the cost of replacing the lost or misplaced CPE.

Professional or Custom In-Suite Installation is required for all Network Services except ReadyOffice and Hosted VPN Services. EarthLink Business’s authorized installation contractor

(AIC) will perform the work. EarthLink Business recommends that Customer order a EarthLink Business site survey to identify potential obstacles to installation, and to preclude the possibility of unexpected installation delays and additional costs to the Customer. EarthLink Business offers Custom In-Suite Installation if Customer requires services beyond the scope of Professional In-Suite Installation. In-Suite Installation is available in the contiguous United States, but may not be available in, or may incur additional charges for, Alaska, Hawaii, Puerto Rico, and Canada.

- i. Professional In-Suite Installation includes the following:
 1. Extend inside wiring up to 50 feet, with a vertical limit of 10 feet, from the MPOE inside the Customer's suite or leased space to a reasonably accessible location near the primary computer or other applicable device, which must be within 6 feet of a grounded, 110 VAC electrical outlet.
 2. Install and test connectivity of an appropriate surface mounted wall jack to the EarthLink Business provided CPE.
 3. Install EarthLink Business provided CPE (shipped to the Customer's Service Location before the installation):
 - a. Mount the CPE to the appropriate rack or surface
 - b. Power up the hardware.
 - c. Verification of Layer 2 and Layer 3 connectivity.
 - i. Test connectivity from the Customer's Service Location to EarthLink Business's Core Network.
 - ii. EarthLink Business Turn-Up personnel ping the WAN interface of the EarthLink Business provided CPE.
 - d. Demonstrate connectivity to local contact and obtain signed acknowledgement from Customer's authorized representative.
 4. Leave an unplugged 6-foot Ethernet cable next to the installed CPE or inside the CPE packaging materials. Customer may use this cable to connect the EarthLink Business CPE to a Local Area Network device.
 5. If EarthLink Business cannot complete a Professional Installation, notwithstanding Layer 2 or Layer 3 connectivity issues caused by EarthLink Business provided CPE and/or EarthLink Business network elements, Customer will be billed for the attempted installation using the Truck Roll charges outlined in the Non-Recurring Charges table below, and for any additional time and materials required to complete the installation at the rates listed in the Non Recurring Charges table or in the Service Order Form.

Materials for Professional In-Suite Installation. Professional installation includes up to 50 feet of Cat-5 cable, a 6-foot Ethernet cable, and other minor materials required to turn up the Service (such as single in-line filters or couplers), but does not include major additional materials (such as conduit or NID splitters). If Customer stops the installation for any reason that requires an AIC to return to the site to complete the installation, additional truck roll charges will apply. For this reason, EarthLink Business recommends that customers with non-standard arrival requirements (such as restaurants with busy periods or retail establishments with hours outside 8AM to 5PM local time) purchase Custom installation.

If the AIC fails to arrive or does not have the necessary materials to complete installation as defined, EarthLink Business will reschedule installation and Customer will not be charged for the missed installation attempt.

In the event that Professional installation is insufficient for Customer's installation requirements, and EarthLink Business cannot transition to Custom installation during the Professional installation truck-roll, EarthLink Business may, at its discretion, attempt to meet expanded requirements through time and materials charges (for example, installing extra wiring). EarthLink Business also may, at its discretion, re-evaluate Customer requirements and

document the requirements in a revised, executed Technical Requirements Document, which may result in additional Customer charges.

- c. **Custom In-Suite Installation.** For Customers with installation needs outside the scope of Professional installation, any custom installation work must be documented in the executed Technical Requirements Document and the applicable NRC for such non-standard work must be stated on the applicable Service Order Form. Any work not clearly defined in the executed Technical Requirements Document will not be performed. EarthLink Business, at its discretion, may attempt to meet customer requirements, or re-evaluate and renegotiate such requirements.
- d. **Limitations on Installation Services.** The following installation activities are never provided by EarthLink Business:
 - i. Drilling through masonry or exterior walls.
 - ii. Installing wiring in attics or crawl spaces.
 - iii. Wiring externally to the suite or building, including drilling from the outside of a building to the inside of a building.
 - iv. Installing wiring through multiple floors or from a DMARC to a suite in a multi-tenant unit (MTU).
 - v. Accepting or utilizing site surveys provided by the Customer or from a third party.
 - vi. Installing wiring or equipment in a location or manner that in EarthLink Business's reasonable opinion would create a safety hazard including work in, above, or near food preparation areas.
- e. **Customer's Pre-Installation Obligations for In-Suite Installation.**
 - i. **For All In-Suite Installation.** Customer shall provide EarthLink Business's authorized installation contractors ("AIC"s) with access to all areas necessary to complete the installation. Prior to the scheduled installation date, Customer shall:
 - 1. Obtain any licenses, approvals, and permissions required by a landlord, building manager, or governmental authority for the installation and meet any insurance requirements related to the installation;
 - 2. Identify Service locations potentially outside the scope of Professional installation or Custom installation as defined in the Customer's Technical Requirements Document, as additional costs may be incurred, including charges for a second installation if work cannot be performed within the scope during the first scheduled installation; and
 - 3. For any Service location in a mall or other multi-tenant unit (MTU), Customer shall arrange for the use of tie pairs/facilities extending from the local telephone company demarcation point (DEMARC) to a common location within Customer's store or leased space at the Service location. If no such pairs/facilities exist, Customer is responsible for their installation and clear identification of appropriate facilities for use prior to the date scheduled for In-Suite Installation. If facilities are not ready, Customer may be charged for an additional installation truck-roll and any other related charges.
 - ii. **For Shared-line ADSL Service.** Prior to the scheduled installation date for any Shared-line ADSL Service, Customer is responsible for having an available, plain old telephone service (POTS) line already installed at the Service location by the incumbent local telephone company and ready for Service use. The line must be clearly identified by the LEC with a tag. If EarthLink Business cannot identify the line, Customer must arrange for LEC identification of the line and may incur additional charges for a second installation truck roll.
 - iii. **For Dial Back-Up Service.** Prior to the scheduled installation date of any Dial Back Up Service, Customer is responsible for having a POTS line already installed for use solely with the Dial Back-Up Service. If Customer is using the POTS line for another service, such as faxing, EarthLink Business may request that Customer purchase additional equipment, such as a NID Splitter, which may result in additional costs to Customer.

5. **Installation Schedule.** In the absence of an amendment to this Agreement that establishes a schedule for installing the provisionable Service locations ordered by Customer, the Parties shall work in good faith to promptly schedule the installation of ordered Service so all provisionable Service locations are scheduled for installation to be completed within ninety (90) days of the date on which Customer delivers this executed Agreement and associated Service Orders to EarthLink Business. Those locations that do not meet this scheduling deadline due to Customer scheduling issues will not be eligible for any EarthLink Business promotions and may be subject to Cancellation Fees.

In-suite installation is scheduled after the circuit is delivered to the DMARC (“Basic Installation”) and EarthLink Business ships the CPE to Customer, if applicable. For Professional In-Suite Installation, EarthLink Business provides a four (4)-hour window for the arrival of the AIC and requires Customer to have a local contact on-site for the duration of the installation. This local contact must be authorized to sign the EarthLink Business work order verifying installation completion. If Customer requires a specific arrival time, an arrival window outside 8AM to 5PM local time, or installation verification from an off-site contact, Customer must purchase Custom installation and outline its requirements in the executed Technical Requirements Document.

6. **Installation Completion.** Service will be deemed installed on the initially scheduled installation date if EarthLink Business has completed Basic Installation but is unable to complete In-Suite Installation on the scheduled installation date because (i) Customer has not met its pre-installation obligations, (ii) establishing the in-suite Service connection would require an activity outside the scope of Professional In-Suite Installation or Custom Installation described in the executed Technical Requirements Document, or (iii) Customer cancels the initial installation date. In such event, Customer will be responsible for contacting EarthLink Business to schedule a second installation visit by the AIC or to reschedule the initial visit by the AIC and additional charges will apply.

1. **Installation of ReadyOffice Service or Hosted VPN Service.** Installation will be deemed complete on the date initially scheduled for the on-line installation of the Network Connector software, provided that the software is made available to Customer on such date.
2. **Installation of Managed Network Services (“MNS”).** MNS shall be activated and deemed installed at a particular Service location on the Service Commencement Date for the underlying EarthLink Business Service ordered for such location. If Customer provides its own EarthLink Business-approved CPE to terminate the EarthLink Business-provided circuit Customer shall (i) provide EarthLink Business with all network specific configuration information at least ten (10) business days prior to the scheduled installation date for the underlying Internet access, or digital transmission Service, and (ii) address and resolve any cabling issues at the Service location prior to the scheduled installation date.
3. **Installation for DS-0 and T-1 Service used for Frame Relay Service.** Unless Customer orders extended demarcation for a particular Service location, Service installation will be deemed complete upon the provisioning of the local access circuit to the MPOE/DEMARC at the Service location premises and EarthLink Business's subsequent notification to Customer that Service has been installed for that Service location. As an alternative, Customer may order Professional Installation.

7. **Service Commencement.** Ordered Service, and EarthLink Business's billing, for each Service location shall commence upon the date by which Service is deemed installed under this Agreement and EarthLink Business has so informed the Customer (**Service Commencement Date**). The Service Commencement Date shall not be delayed or otherwise affected if facilities, equipment, services, or applications not ordered from EarthLink Business have not been installed or are not functional. Prior to EarthLink Business's issuance of a firm order commitment to Customer for a particular Service location, EarthLink Business may reject the Service Order for that location due to the unavailability of any third party facilities required to feasibly provision ordered Service.

8. **Services Availability and Transmission Speeds.** EarthLink Business shall use commercially reasonable efforts to provide Services ordered by Customer, and Customer acknowledges that the provisioning of

Services is subject to availability. Once installed, Services will be available 24 hours a day, 7 days a week, except in the event of any scheduled preventive maintenance, for which EarthLink Business will use commercially reasonable efforts to provide prior notification via electronic mail to Customer, or of any unscheduled emergency maintenance which shall be concluded as soon as practicable. Service shall be provisioned to a particular Service location in accordance with its applicable SLA described in the section of the Agreement entitled Service Level Agreements and at the maximum speed supported by the facilities and equipment serving that location up to the transmission speed ordered, except that Service ordered with a committed information rate (CIR) quality of service will be delivered with such CIR. Customer understands that the actual Service transmission speeds may vary from those expected by Customer (and that EarthLink Business may not be able to provision ordered Service to a particular Service location) due to such factors as the length, gauge, and quality of the facilities serving the location and the equipment used by EarthLink Business.

9. Service Term and Renewal. For each Service location, the initial Service Term shall be twelve (12) months unless specified as a longer period in the applicable Service Order. The initial Service Term for Service at each Service location shall begin on its Service Commencement Date. Upon expiration of the initial Service Term, the Service at a particular Service location shall renew for consecutive one-month Service Terms unless Customer provides to EarthLink Business written notice of termination, or either Party provides to the other written notice of non-renewal, at least thirty (30) days prior to the expiration date of the then-current Service Term.

10. Service Level Agreements (SLAs). The following SLA applies to DSL and T-1 Reach Services, www.newedgenetworks.com/files/pdf/sla_dsl.pdf. The following SLA applies to T-1 DIA and T-3 DIA Services, www.newedgenetworks.com/files/pdf/sla_t1.pdf. Service credits are available for violations of these SLAs pursuant to their terms.

11. Pricing. Applicable Service monthly recurring charges (MRCs) and installation non-recurring charges (NRCs), exclusive of applicable taxes and surcharges, and other fees, are listed in the Service Order. EarthLink Business reserves the right to change its pricing for Services not yet ordered, and for each Service ordered after expiration of its initial Service term, by giving Customer not less than thirty days written notice by email or otherwise. In addition, to the extent the underlying local access provider raises them pursuant to a change in law or regulatory approval EarthLink Business may adjust its Service Charges upon thirty (30)-days written notice. Standard non-recurring charges are listed below; other non-recurring charges, which may apply, will be listed on the applicable Service Order.

Standard Non-Recurring Charges Per Service at Each Service Location.

Description of Service or Service-related Event	NRC
Cancellation of Order by Customer prior to Service Commencement Date or by EarthLink Business due to lack of reasonable cooperation by Customer in scheduling Service installation.	Cancellation Fee is \$100 per Service location plus the amount of any related cancellation charge assessed against EarthLink Business by an underlying provider involved in providing the Service. The Parties agree that the Cancellation Fee is a form of liquidated damages and not a penalty. No Cancellation Fee will apply if Customer terminates Service pursuant to the Agreement due to an uncured material breach by EarthLink Business.
Form of Payment Rejection as when credit card is rejected or check is dishonored for insufficient funds.	\$25 (or legal limit, if less).
Lack of Access when a secondary truck roll for a Service location has been scheduled with Customer but EarthLink Business is denied access reasonably required to provide Service at the location.	\$150 per occurrence.

Professional Installation for new circuit installation or outside circuit move, except for Frame Relay Service.	Base rate (includes services outlined in Installation Services section), plus \$37.50 per 15-minute increment or part thereof for work outside of scope or over two (2) hours, with \$0.50 per foot for any CAT5 cable beyond 50 feet. An additional charge shall apply per installation outside the contiguous United States. And an additional \$250 applies per circuit moved.
Service Reinstatement following suspension for nonpayment in breach of Agreement.	\$100 per occurrence per circuit.
Termination of Service at a Service location prior to expiration of its Service Term.	Early Termination Fee (“ETF”) is equal to the amount of the monthly recurring charge for the Service being terminated multiplied by the number of months remaining in its Service Term. ETF will apply to each circuit terminated. The Parties agree that ETF is a form of liquidated damages and not a penalty. No ETF will apply to: (i) a circuit upgraded to a circuit with alternate EarthLink Business access technology at the same Service location, provided that the circuit is terminated after more than one year of its Service Term has expired; (ii) a T1 circuit replaced by either multiple T1 circuits or a DS3 at the same Service location, provided that the T1 is terminated after more than one year of its Service Term has expired; (iii) any circuit upgrade that does not require circuit replacement; or (iv) any Service terminated by Customer pursuant to the Agreement due to an uncured material breach by EarthLink Business.
Truck Roll for inside move, change order that requires a truck roll, secondary work order due to customer-missed appointment or lack of access on scheduled installation date, or Service repair required because of issue not attributable to EarthLink Business.	\$250 (includes 1 hour on site) plus \$37.50 per 15-minute increment or part thereof beyond 1 hour on site, with \$0.50 per foot for any CAT5 cable beyond 50 feet. An additional charge shall apply per installation outside the contiguous United States (when and where such truck rolls are available). And an additional \$150 charge applies if a truck roll is expedited for a Saturday, holiday, or same day dispatch at Customer’s request, if such scheduling is available.

12. Customer Premises Equipment. The EarthLink Business CPE, which is provided (and not sold) to Customer as part of ordered Service, is the sole and exclusive property of EarthLink Business (“EarthLink Business CPE”). Customer is permitted to use EarthLink Business CPE solely in connection with the Service and pursuant to this Agreement. Upon delivery of the CPE to the Service location, Customer is responsible for operating EarthLink Business CPE within the parameters of the manufacturer's specifications and is responsible for all loss or damage to EarthLink Business CPE beyond normal wear and tear, excluding any loss or damage that is the fault of EarthLink Business or its third party subcontractors. If reconfiguration of EarthLink Business CPE is required after initial configuration due to Customer’s action, EarthLink Business configuration support shall be chargeable to Customer at EarthLink Business's standard CPE reconfiguration and support rates. If EarthLink Business determines that provisioned EarthLink Business CPE is faulty, EarthLink Business will use commercially reasonable efforts to send replacement EarthLink Business CPE via next business day delivery to Customer’s affected Service location for Customer to install, unless Customer orders Professional or Premium installation for the CPE. Customer shall return any faulty EarthLink Business CPE, including all originally-supplied parts and materials including connector cords and manuals, to EarthLink Business within fifteen (15) days of receipt of the replacement EarthLink Business CPE. Failure to do so shall result in Customer being billed for the faulty EarthLink Business CPE in an amount equal to vendor's list price, as determined by EarthLink Business.

Upon termination of Service to any Service location, or upon termination of the Agreement, (i) Customer's right to use EarthLink Business CPE provided for use with that Service location shall terminate absent EarthLink Business's written authorization to use such EarthLink Business CPE in connection with another Service location, and (ii) unless Customer has already returned the EarthLink Business CPE provisioned for the terminated Service location, including all originally-supplied parts and materials (including connector cords and manuals), Customer shall be invoiced for the EarthLink Business CPE in the amount equal to vendor's list price, as determined by EarthLink Business, and shall receive a credit for that amount upon EarthLink Business's receipt of the CPE. To return EarthLink Business CPE, Customer shall (1) call or email EarthLink Business Customer Care to receive a Return Materials Authorization ("RMA") number, (2) ship the equipment, including all originally-supplied parts and materials including connector cords and manuals, back to EarthLink Business (using shipping label provided and paid by EarthLink Business) to be received within fifteen (15) days of any replacement EarthLink Business CPE or, in the event of Service termination for a given Service location, no more than thirty (30) days after such termination. Risk of loss for a returned EarthLink Business CPE remains with Customer until EarthLink Business shipper receives it. Customer shall not make any physical modifications to EarthLink Business CPE or permit third party access to any EarthLink Business CPE without prior written consent from EarthLink Business. In addition, Customer shall not change or remove any labels, insignia, or other markings, which are on EarthLink Business CPE at the time it is provided or which may afterwards be placed on the CPE by EarthLink Business or by any person authorized by EarthLink Business.

- 13. Billing and Payment Terms.** EarthLink Business will send to one location designated by Customer a single monthly invoice for amounts due under this Agreement. All invoices will be in EarthLink Business's standard format. Customer is liable for all amounts due to EarthLink Business under this Agreement. EarthLink Business's first invoice will include any non-recurring charges incurred, and the pro-rated monthly recurring charge for services rendered, prior to the invoice date, as well as the monthly recurring charge for Services to be provided during the month in which the invoice is sent. Payment in U.S. currency is due within thirty (30) days of the invoice date, except as otherwise provided below with respect to Billing Disputes noticed prior to the invoice payment due date. Past due accounts will be charged a late fee of 1.5% per month (or legal limit, if less) on any unpaid past due balance. EarthLink Business will bill Customer for, and Customer must pay, any applicable fees, taxes (excluding those based on EarthLink Business's net income), and surcharges associated with the Services ordered by Customer. Service pricing is exclusive of such fees, taxes, and surcharges.
- 14. Billing Dispute Process.** Customer shall notify EarthLink Business of any billing dispute by emailing EarthLink Business at customercare@newedgenetworks.com, stating in the subject line "Billing Dispute," and stating in the body of the message (i) the date of the disputed invoice, (ii) customer's account number, (iii) the amount disputed, and (iv) the basis for the dispute. With respect to any invoiced amount that Customer does not timely pay in full, Customer's failure to so dispute such amount prior to the applicable payment due date shall preclude Customer's right to dispute such amount. With respect to an invoiced amount that is timely paid, Customer's failure to so dispute such amount within sixty (60) days after its payment shall preclude Customer's right to dispute it. The Parties shall work in good faith to promptly resolve any billing dispute initiated pursuant to this Agreement. If the Parties resolve a dispute in favor of EarthLink Business and Customer has not already paid the disputed amount, Customer shall pay such amount to EarthLink Business plus any applicable late fees within ten (10) days of such resolution. If the Parties resolve the dispute in favor of Customer, EarthLink Business shall apply a credit in the disputed amount to Customer's account in the billing cycle following such resolution. If EarthLink Business notifies Customer in writing (via email or otherwise) that it has determined that the disputed amount is owed to EarthLink Business, all disputed amounts not already paid and any related late fees shall become due and payable within ten (10) days of such notification.
- 15. Customer Representations.** Customer represents that it has full power and authority to enter into this Agreement to receive Services and to carry out the obligations stated herein. Customer represents that its compliance with the terms and conditions of this Agreement will not violate any of Customer's third party agreements. Customer also represents or estimates in good faith that more than 10% of all ordered data packets that it will transmit through any ordered Service will originate and terminate in

different states, whether as a result of Internet access and usage or otherwise.

- 16. Customer Responsibilities.** Customer shall provide EarthLink Business with all reasonable access to the Service locations, necessary assistance, and co-operation, to allow EarthLink Business to perform its obligations under the Agreement. Customer has sole responsibility for installation, testing, and operation of facilities, equipment, services, and applications that Customer provides itself or orders from third parties. For example, Customer is required to provide and install any network interface cards that may be required for delivery of the Service to ordered Service locations and Customer is responsible for registration and maintenance of its domain names. In addition, Customer and not EarthLink Business, is responsible for the installation, creation, and configuration of any LAN or of any software and equipment peripheral to Customer's computers or LAN. In no event will the untimely installation or non-operation of Customer facilities, equipment, and services that are not ordered from EarthLink Business excuse Customer from its obligation to pay charges due hereunder as of the applicable Service Commencement Date for each Service. Customer is responsible for the content of all data transmitted by its employees and its users of the Service provided to Customer, and for compliance of its employees and such users with laws applicable thereto, including any applicable export restrictions. To the extent Customer has ordered Service which includes Internet access, Customer and all users of such Service shall abide by the terms of EarthLink Business's Acceptable Use Policy ("AUP") posted at www.newedgenetworks.com/about/legal/aup.php and incorporated herein by reference, and any modifications thereto. Upon IP address reassignment, expiration, or cancellation, or termination of the Agreement, Customer shall relinquish any IP addresses or address blocks assigned to Customer by EarthLink Business in connection with an ordered Service.
- 17. Network Security.** *Customer remains responsible for its own network security and security violation response procedures. Customer acknowledges that no Service is guaranteed to ensure Customer's network security or to prevent security incidents. Customer acknowledges that EarthLink Business is not responsible for any unauthorized third party or Customer access to Customer facilities.*
- 18. Order Cancellation.** *The Cancellation Fee specified in the Standard Non-Recurring Charges chart above will apply if the Service Order includes a Professional (on-site) Installation and Customer refuses to schedule an installation appointment to occur within fifteen (15) days of when EarthLink Business first contacts Customer, using Customer-supplied contact information, and EarthLink Business consequently cancels the order. The same Cancellation Fee will apply to each Service location cancelled by Customer more than five (5) days after submitting the applicable Service Order, except if EarthLink Business cannot activate the ordered Service within sixty (60) days of receipt of the Service Order and Customer notifies EarthLink Business prior to the Service Commencement Date that Customer is canceling its Service Order. Cancellation notice from Customer must be in the form of an email sent to customercare@newedgenetworks.com with "Cancel Service Order" in the subject line of the email and Customer's contact information and identification of the service ordered in the body of the email.*
- 19. Service Termination.** Customer may terminate this Agreement with respect to ordered Service for a particular Service location due to EarthLink Business's material breach of the Agreement if EarthLink Business fails to cure such breach within thirty (30) days of receipt of Customer's written notice of such breach. In addition, in the absence of any material breach, Customer may terminate any Service under this Agreement upon notice (of at least five (5) days if prior to commencement of Service and of thirty (30) days if after commencement of Service), with such notice submitted by Customer by following the instructions located at either the MyEdge portal once logged in to <https://my.newedgenetworks.com/index.xem> or at www.newedgenetworks.com/disco, or by emailing customercare@newedgenetworks.com with "Terminate EarthLink Business Service" in the subject header. The body of the email should contain the site's OMS number, site address, and site telephone number. If you would like to provide us with a reason for disconnect please include in your email one of the following codes: a) Service & Support Issues; b) Price; c) Product Expectations; or d) Business Issues Unrelated to EarthLink Business. EarthLink Business may suspend or terminate Services to Customer following ten (10) days electronic or other written notice and Customer's failure to cure such non-payment within the notice period. EarthLink Business may suspend or terminate Services and this Agreement without prior notice if Customer fails to timely pay in full for Services or violates EarthLink Business's Acceptable Use Policy. Customer may reinstate Services

suspended for nonpayment if, within five (5) days of the Service's suspension date, Customer pays to EarthLink Business the Service Reinstatement Fee plus all outstanding amounts due, including the cost of Service that would have been provided during the suspension period. If the Customer chooses not to so reinstate Service, EarthLink Business will deactivate Service without further notice and any applicable invoiced charges, including any applicable Early Termination Fee, shall become immediately due and payable. *Unless EarthLink Business is unable to provision ordered Service or Customer terminates Service pursuant to this Agreement due to an uncured, material breach by EarthLink Business, Cancellation Fees and Early Termination Fees (as described in the section of the Agreement entitled Pricing) will apply.*

- 20. Force Majeure.** Except for payment of monies due, neither Party is responsible for any delay or failure to perform its obligations due to any cause beyond its reasonable control, including but not limited to acts of God, natural disasters, government orders, labor unrest, and unanticipated suspension or cessation of service from any underlying service provider. The Party so prevented from performing its obligations shall notify the other Party of the reason and the anticipated duration of non-performance, use commercially reasonable efforts to remove such cause, and resume its performance of this Agreement as soon as such cause is removed.
- 21. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY.** EXCEPT FOR SERVICE LEVEL AGREEMENT COMMITMENTS, EARTHLINK BUSINESS HEREBY DISCLAIMS ALL WARRANTIES, INCLUDING, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. APPLICABLE SERVICE CREDITS UNDER ANY APPLICABLE SLA SHALL BE THE EXCLUSIVE REMEDY FOR ANY SERVICE DEFECT, OUTAGE, OR OTHER SLA VIOLATION. SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OF PRIVACY) ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH DAMAGES ARE ASSERTED ON THE BASIS OF CONTRACT, TORT, OR STRICT LIABILITY LAW. WITH RESPECT TO SL-ADSL SERVICE, EARTHLINK BUSINESS SHALL NOT BE RESPONSIBLE FOR ANY INTERRUPTION OR LOSS OF REGULAR VOICE TELEPHONE SERVICE, EMERGENCY ASSISTANCE (911), FIRE AND OTHER ALARM SERVICES, DIRECTORY ASSISTANCE (411), OR OTHER SOUND-RELATED TELEPHONE FUNCTIONS. IN ANY EVENT, EARTHLINK BUSINESS'S CUMULATIVE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS RELATED TO THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID DURING A ONE-YEAR PERIOD.
- 22. Indemnity.** To the fullest extent permitted by law, Customer shall defend, indemnify, and hold harmless EarthLink Business against any liability arising from or incidental to Customer's breach of this agreement, negligence, or willful misconduct.
- 23. Confidential Information.** Each Party will keep and maintain the confidentiality of, and use only for the intended purpose, any information of the other Party disclosed pursuant to the Agreement that could reasonably be considered of a proprietary or confidential nature, including the Agreement ("Confidential Information"); except that, either Party may disclose Confidential Information about the Agreement subject to a written confidentiality obligation at least as protective of the information as this provision, or to the extent necessary to advance a merger or acquisition involving all or substantially all of the Party's assets or ownership interests or as may be required by its auditors or regulators. Confidential Information will remain the property of the disclosing Party and upon termination of the Agreement is to be promptly returned, including copies, to its respective owner or destroyed. This confidentiality obligation does not apply to information that (i) is publicly available through authorized disclosure, (ii) is properly known by the receiving Party when received as evidenced in writing, (iii) is rightfully obtained from a third party with the right to disclose it, (iv) is independently developed without use of the Confidential Information as established by documentary evidence, or (v) is required by law to be disclosed; provided sufficient notice is

given to enable the disclosing Party to seek a protective order or exemption from such requirement. This Section will survive the termination of the Agreement.

Customer has a right and EarthLink Business has a duty to protect the confidentiality of Customer's Customer Network Proprietary Information ("CPNI"). CPNI is information about the quantity, technical configuration, type, destination, location, usage and billing of Customer's Service. EarthLink Business will not use or disclose Customer's CPNI except as permitted or required by federal law and applicable FCC regulations. EarthLink Business will use Customer's CPNI only to provide to Customer or suggest other communications-related services tailored to Customer's needs. Customer has the right to impose additional restrictions on EarthLink Business's use of Customer's CPNI by "opting-out." If Customer opts-out, EarthLink Business and its affiliates, agents, partners, vendors or contractors will not use Customer's CPNI to market additional services to Customer. Opting-out will not affect the provision of any Service already being provided to Customer, but it may prevent Customer from receiving certain information about additional services from EarthLink Business. If EarthLink Business does not hear from Customer within 30 days after Customer first signs up for Service, EarthLink Business will assume Customer does not wish to opt-out; however, Customer may choose to opt-out at any time. Customer's decision whether or not to opt-out will remain in effect until Customer changes it; removing consent will not affect Customer's current Service. In addition, EarthLink Business will send a notice every two years reminding Customer of the opportunity to opt-out. Customer may use any of the following methods to opt-out: (a) visit www.earthlinkbusiness.com/optout and complete the Opt-Out Form; (b) contact Customer Service at 1-866-636-HELP; (c) notify EarthLink Business in writing at EarthLink Business, 2150 Holmgren Way, Green Bay, WI 54304. Customer will need to provide the following information: (i) Customer name; (ii) service billing address; (iii) ten-digit telephone number(s); and (iv) Service account number.

- 24. Integration.** The Agreement constitutes the complete and exclusive statement of the understandings of EarthLink Business and Customer with respect to the subject matter of the Agreement and supersedes all prior oral and written statements relating to the Services provided hereunder. The Agreement may be modified or amended only by a written or electronic document signed by EarthLink Business and Customer.
- 25. Miscellaneous.** This Agreement shall be governed by the laws of the State of Washington without reference to its choice of law principles. The federal courts of the United States in the Western District of Washington and the state courts of the State of Washington located in Vancouver, WA shall have exclusive jurisdiction to adjudicate any action against EarthLink Business arising out of or relating to this Agreement and each Party hereby consents to the jurisdiction of such courts. The prevailing Party in any action arising out of or related to the Agreement shall be entitled to recover its reasonable expenses, including attorney's fees and court costs. Neither Party may initiate an action (regardless of form) arising out of this Agreement more than three (3) years after the cause of action has accrued. Customer may not assign this Agreement without EarthLink Business's prior written consent, which consent shall not be unreasonably withheld. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.