

New Edge Networks 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 company, doing business as New Edge Networks (**New Edge**) and your company identified in your order (**Customer**). 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. NEN 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 New Edge. "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-1 Service.** 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 New Edge CPE provided for use with this Service.

4. **Installation Specifications.** New Edge 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 New Edge’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 New Edge 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 New Edge CPE is returned to New Edge as undeliverable, New Edge will attempt to verify the correct Service location (or other Customer provided) shipping address and will then send the New Edge CPE to that address. If New Edge, using reasonable efforts, is unable to successfully deliver the CPE to a Service location on the second attempt, New Edge 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 New Edge 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. New Edge’s authorized installation contractor (AIC) will perform the work. New Edge recommends that Customer order a New Edge site survey to identify potential obstacles to installation, and to preclude the possibility of unexpected installation delays and additional costs to the Customer. New Edge 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 New Edge provided CPE.
 3. Install New Edge 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 New Edge's Core Network.
 - ii. New Edge Turn-Up personnel ping the WAN interface of the New Edge 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 New Edge CPE to a Local Area Network device.
 5. If New Edge Networks cannot complete a Professional Installation, notwithstanding Layer 2 or Layer 3 connectivity issues caused by New Edge provided CPE and/or New Edge 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, New Edge 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, New Edge 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 New Edge cannot transition to Custom installation during the Professional installation truck-roll, New Edge may, at its discretion, attempt to meet expanded requirements through time and materials charges (for example, installing extra wiring). New Edge 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. New Edge, 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 New Edge:
 - 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 New Edge'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 New Edge'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 New Edge 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, New Edge Networks 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 New Edge. Those locations that do not meet this scheduling deadline due to Customer scheduling issues will not be eligible for any New Edge promotions and may be subject to Cancellation Fees.

In-suite installation is scheduled after the circuit is delivered to the DMARC ("Basic Installation") and New Edge ships the CPE to Customer, if applicable. For Professional In-Suite Installation, New Edge 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 New Edge 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 New Edge 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 New Edge 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 New Edge Service ordered for such location. If Customer provides its own New Edge-approved CPE to terminate the New Edge-provided circuit Customer shall (i) provide New Edge 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 New Edge'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 New Edge's billing, for each Service location shall commence upon the date by which Service is deemed installed under this Agreement and New Edge 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 New Edge have not been installed or are not functional. Prior to New Edge's issuance of a firm order commitment to Customer for a particular Service location, New Edge 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.** New Edge 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 New Edge 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 New Edge 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 New Edge.
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 New Edge 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. New Edge 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 New Edge 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 New Edge 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 New Edge 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 New Edge.
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 New Edge 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 New Edge 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 New Edge.

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 New Edge.	\$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.
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12. Customer Premises Equipment. The New Edge CPE, which is provided (and not sold) to Customer as part of ordered Service, is the sole and exclusive property of New Edge ("New Edge CPE"). Customer is permitted to use New Edge 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 New Edge CPE within the parameters of the manufacturer's specifications and is responsible for all loss or damage to New Edge CPE beyond normal wear and tear, excluding any loss or damage that is the fault of New Edge or its third party subcontractors. If reconfiguration of New Edge CPE is required after initial configuration due to Customer's action, New Edge configuration support shall be chargeable to Customer at New Edge's standard CPE reconfiguration and support rates. If New Edge determines that provisioned New Edge CPE is faulty, New Edge will use commercially reasonable efforts to send replacement New Edge 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 New Edge CPE, including all originally-supplied parts and materials including connector cords and manuals, to New Edge within fifteen (15) days of receipt of the replacement New Edge CPE. Failure to do so shall result in Customer being billed for the faulty New Edge CPE in an amount equal to vendor's list price, as determined by New Edge. Upon termination of Service to any Service location, or upon termination of the Agreement, (i) Customer's right to use New Edge CPE provided for use with that Service location shall terminate absent New Edge's written authorization to use such New Edge CPE in connection with another Service location, and (ii) unless Customer has already returned the New Edge 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 New Edge CPE in the amount equal to vendor's list price, as determined by New Edge, and shall receive a credit for that amount upon New Edge's receipt of the CPE. To return New Edge CPE, Customer shall (1) call or email New Edge 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 New Edge (using shipping label provided and paid by New Edge) to be received within fifteen (15) days of any replacement New Edge 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 New Edge CPE remains with Customer until New Edge shipper receives it. Customer shall not make any physical modifications to New Edge CPE or permit third party access to any New Edge CPE without prior written consent from New Edge. In addition, Customer shall not change or remove any labels, insignia, or other markings, which are on New Edge CPE at the time it is provided or which may afterwards be placed on the CPE by New Edge or by any person authorized by New Edge.

13. Billing and Payment Terms. New Edge will send to one location designated by Customer a single monthly invoice for amounts due under this Agreement. All invoices will be in New Edge's standard format. Customer is liable for all amounts due to New Edge under this Agreement. New Edge'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. New Edge will bill Customer for, and Customer must pay, any applicable fees, taxes (excluding those based on New Edge'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 New Edge of any billing dispute by emailing New Edge 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 New Edge and Customer has not already paid the disputed amount, Customer shall pay such amount to New Edge plus any applicable late fees within ten (10) days of such resolution. If the Parties resolve the dispute in favor of Customer, New Edge shall apply a credit in the disputed amount to Customer's account in the billing cycle following such resolution. If New Edge notifies Customer in writing (via email or otherwise) that it has determined that the disputed amount is owed to New Edge, 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 New Edge with all reasonable access to the Service locations, necessary assistance, and co-operation, to allow New Edge 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 New Edge, 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 New Edge 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 New Edge'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 New Edge 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 New Edge 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 New Edge first contacts Customer, using Customer-supplied contact information, and New Edge 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 New Edge cannot activate the ordered Service within sixty (60) days of receipt of the Service Order and Customer notifies New Edge 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 New Edge's material breach of the Agreement if New Edge 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 New Edge 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 New Edge. New Edge 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. New Edge may suspend or terminate Services and this Agreement without prior notice if Customer fails to timely pay in full for Services or violates New Edge'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 New Edge 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, New Edge will deactivate Service without further notice and any applicable invoiced charges, including any applicable Early Termination Fee, shall become immediately due and payable. *Unless New Edge is unable to provision ordered Service or Customer terminates Service pursuant to this Agreement due to an uncured, material breach by New Edge, 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, NEW EDGE 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, NEW EDGE 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, NEW EDGE'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 New Edge against any liability arising from or incidental to Customer's breach of this agreement, negligence, or willful misconduct.
- 23. Integration:** The Agreement constitutes the complete and exclusive statement of the understandings of New Edge 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 New Edge and Customer.
- 24. 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 New Edge 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 New Edge'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.