

# 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 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 that no less than 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 Service Order 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, as described in the section of the Agreement entitled Pricing.

**5. Installation Specifications.** New Edge shall provide Customer with notice of Service installation. Installation specifications are provided below and applicable non-recurring charges are listed in the non-recurring charges chart in the section of the Agreement entitled Pricing.

**A. Customer's Pre-Installation Obligations.**

- For In-Suite Installation. Customer shall provide New Edge's authorized installation contractors with access to all areas necessary to complete the installation during the first scheduled appointment. Prior to the scheduled installation date, Customer shall:
  - a. Obtain any approvals or permissions required by a landlord or building manager for the installation and meet any insurance requirements related to the installation;
  - b. Identify all Service locations (i) with drop ceilings or ceilings higher than 12 feet, (ii) that require work in/above/or near food preparation areas, or (iii) that require more than one person to safely and properly complete installation; and
  - c. 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 for use prior to the date scheduled for In-Suite Installation.
- 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.

**B. Basic Installation.** Basic installation for all Services is complete at a particular Service location upon New Edge's provisioning and activation of the Service local access circuit to the local telephone company demarcation point (DEMARC) outside the Customer's suite at the Service location.

**C. In-Suite Installation.** As described below, New Edge offers several levels of wiring and related installation services within Customer's suite or retail space at a Service location. In-Suite Installation is required for all Network Services and for Broadband Internet Access SDSL 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 all potential obstacles to installation, and to preclude the possibility of unexpected installation delays and costs to Customer.

- **Professional In-Suite Installation.** New Edge's AIC will extend the inside wiring from a common location within Customer's suite or leased space to a reasonably accessible location at or near the primary personal computer (or other applicable device) location, which must be within 6 feet of a grounded, 110 VAC, electrical outlet. The AIC will also install an appropriate surface-mounted wall jack and any CPE provided by New Edge as part of the Service with other minor materials required to complete in-suite wiring. In addition, the AIC will leave in a box up to 6 feet of Ethernet cable for Customer to use to connect one hub device for Customer's Local Area Network (LAN) to the CPE. Provided that Customer is the owner or sole tenant of the Service location building, the AIC will install up to 25 feet of new Category 5 wire (to the extent new wiring is required) from the local access circuit connection at the DEMARC to the interior of the building. The wiring will be run in an accessible basement or crawl space area or externally along a convenient route, provided that Customer has met its pre-installation obligations. Up to two hours of on-site work is included. If more than two hours of work is required on-site, Customer may authorize additional time on-site, in which event such work will be billed according to the applicable non-recurring charge stated in this Agreement.

The following activities are outside the scope of In-Suite Installation: (1) drilling through masonry, (2) installing conduit, (3) installing wiring or equipment in a location or manner that in New Edge's reasonable opinion would create a safety hazard, (4) installing wiring or equipment more than 12 feet above floor level unless Customer has informed New Edge prior to the scheduled installation date that the Service location requires a non-standard ladder or scissor lift, and Customer has also agreed prior to such date to the additional cost of providing same, and (5) accepting or utilizing site surveys provided by Customer or a third party.

Provided that Basic Installation has been completed at a particular Service location for which In-Suite Installation has been ordered, Service will be deemed installed at such location on the initially scheduled installation date, except as provided in the last sentence of this paragraph. To be clear, the Service will be deemed installed on the initially scheduled installation date if New Edge is unable to complete In-Suite Installation on the scheduled installation date because (i) Customer has not met its pre-installation obligations listed above, (ii) establishing the in-suite Service connection would require an activity outside the scope of In-Suite Installation, or (iii) Customer cancels the initial installation date. In such event, Customer would be responsible for contacting New Edge to schedule a second installation visit by the AIC or to reschedule the initial visit by the AIC. The installation non-recurring charge will not apply as of the initially scheduled installation date only if the AIC has not arrived at the location on the scheduled installation date (in which case New Edge would reschedule installation with the Customer) or the AIC otherwise fails to complete the work within the scope of the ordered In-Suite Installation for a reason unrelated to any failure by Customer to meet its pre-installation obligations.

**D. Self-Installation of CPE by Customer for Broadband Internet Access Services.** Unless Customer orders In-Suite Installation for one of these Services, Customer shall be responsible for installation of any related, New Edge-provided CPE. Provided that Basic Installation has been completed, such Service shall be deemed installed at a Service location and billing will commence on the date on which New Edge ships the CPE with self-installation instructions to the Service location. 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.

**6. 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.

7. **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.
  
8. **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.
  
9. **Service Level Agreements (SLAs).** The following SLA applies to DSL and T-1 Reach Services, [www.newedgenetworks.com/files/pdf/sla\\_dsl.pdf](http://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](http://www.newedgenetworks.com/files/pdf/sla_t1.pdf). Service credits are available for violations of these SLAs pursuant to their terms.
  
10. **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
<b>Add Dial Back Up Service</b> after installation of primary Service at site.	\$99 per circuit in addition to Truck Roll charge.
<b>Add Internet Connect Service</b> to MPLS network after installation of MPLS Service.	\$100 per port in addition to charge for Truck Roll, if required.
<b>Add Managed Network Service</b> after installation of primary Service at site.	\$99 per circuit in addition to charge for Truck Roll, if required.
<b>Add Project Management</b> for New Edge to assign project manager who will coordinate with Customer the provisioning of Service from the date the order is submitted until 90 days after the Service Commencement Date at each Service location.	\$200 per circuit. Free for Network Service Customers.

<b>Add Ready Office Service</b> after installation of primary Service at site.	\$299 per host Service location and \$10 per remote Service location.
<b>Cancellation of Order</b> 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 \$250 per Service location plus the amount of any related cancellation charge assessed against New Edge by an underlying provider involved in providing the Service. (Upon request, New Edge shall provide Customer with documentation of such expenses.) 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.
<b>Form of Payment Rejection</b> as when credit card is rejected or check is dishonored for insufficient funds.	\$25 (or legal limit, if less).
<b>Frame Relay Service Installation and other non-recurring service or event related to Frame Relay Service.</b>	Except for Cancellation Fee and ETF, which are discussed above, applicable non-recurring charges are priced on an individual case basis due to variety of costs related to different Frame Relay Service types and locations.
<b>Lack of Access</b> 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. Note that this charge is in addition to the applicable Truck Roll charge.
<b>Method of Procedure (MOP)</b> for installation, which is developed by New Edge in accordance with Customer's instructions and included in CPE shipments provided to installer.	\$200 per MOP, except for Network Service Customers, for whom there is no charge.
<b>Pre-installation Site Survey</b> which includes survey of site to identify all obstacles to installation, an itemized list of required actions, materials, resources, and estimated costs required to complete installation, plus diagrams or digital photos of the proposed location for wiring and equipment.	\$250 per site surveyed.
<b>Professional Installation</b> for new circuit installation or outside circuit move, except for Frame Relay Service.	Base rate (includes 2 hours on site), plus \$37.50 per 15-minute increment or part thereof over 2 hours on site, with \$0.40 per foot for any CAT5 cable beyond 25 feet. An additional \$50.00 charge applies per installation outside continental U.S. And an additional \$250 applies per circuit moved.
<b>Quick Service</b> for Customer's network, including: <ul style="list-style-type: none"> <li>• Change of NAT Configuration</li> <li>• Change of DHCP Configuration</li> <li>• Change of DNS</li> <li>• Change of LAN IP's</li> <li>• Purchase of additional public IP's</li> <li>• 1:1 NAT Setting</li> <li>• Port Mappings</li> <li>• Host Mappings, and</li> <li>• Changing public SNMP String to private.</li> </ul>	\$37.50 per 15 minute increment or part thereof.
<b>Remote Engineering Service</b>	For work requested to occur during standard business

<ul style="list-style-type: none"> <li>• White List Changes</li> <li>• Conversion from broadband Internet access to Network Service</li> <li>• Conversion of Network-based VPN to MPLS</li> <li>• PCI Compliance Configurations</li> <li>• Remote configuration design of CPE at remote Service locations</li> <li>• Remote assurance testing or interoperability testing of New Edge CPE or Service</li> <li>• Firewall management consultation</li> <li>• Speed downgrade</li> </ul>	<p>hours (M-F, 7A.M.-5P.M. Pacific Time) - \$150 for first hour or any part thereof, plus \$37.50 per 15-minute increment or part thereof beyond 1 hour of work.</p> <p>For work requested with at least 72-hour notice to occur outside standard business hours - \$350 for first hour or any part thereof, plus \$87.50 per 15-minute increment or part thereof beyond 1 hour of work.</p> <p>For work requested with less than 72-hour notice to occur outside standard business hours - \$450 for first hour or any part thereof, plus \$87.50 per 15-minute increment or part thereof beyond 1 hour of work.</p>
<p><b>Service Reinstatement</b> following suspension for nonpayment in breach of Agreement.</p>	<p>\$150 per occurrence.</p>
<p><b>Smoke Jump</b> visit by New Edge specialist who will assist on site in turn up of Service at Host Service location and/or in resolving network issues. Available only in continental U. S.</p>	<p>\$3,000 per occurrence. First smoke jump is free for Customers who have ordered Network Services for more than 20 locations or Services with monthly recurring charges totaling more than \$12,000 a month.</p>
<p><b>Supplementing Order</b> to change telephone number, address, or type of installation after order submission and prior to order completion by underlying access provider.</p>	<p>\$50 per occurrence per circuit.</p>
<p><b>Termination of Service</b> at a Service location prior to expiration of its Service Term.</p>	<p>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 DSL circuit replaced by a T1 circuit at the same Service location; (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 half of its Service Term has expired; or (iii) any Service terminated by Customer pursuant to the Agreement due to an uncured material breach by New Edge.</p>
<p><b>Truck Roll</b> 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.</p>	<p>\$250 (includes 1 hour on site) plus \$37.50 per 15-minute increment or part thereof beyond 1 hour on site, with \$0.40 per foot for any CAT5 cable beyond 25 feet. An additional \$50.00 charge applies per installation outside continental United States. And an additional \$150 charge applies if a truck roll is expedited for a Saturday, holiday, or same day dispatch at Customer’s request.</p>

**11. Customer Premises Equipment.** New Edge CPE, which is provided (and not sold) to Customer as part of ordered Service, is and will remain the sole property of New Edge. Customer is permitted to use New Edge CPE solely in connection with the Service and pursuant to this Agreement. Customer shall not make any physical modifications to the 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. 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 or agents. 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 installation for installing such New Edge CPE. Customer shall return any faulty New Edge CPE to New Edge within 15 days of receipt of the replacement New Edge CPE. Failure to do so shall result in the Customer being billed for the faulty New Edge CPE in the amount equal to vendor's list price as determined by New Edge. Upon termination of Service at a Service location, New Edge will invoice Customer the original price for the CPE provisioned at such location. If the CPE is returned within 20 days of termination and is confirmed by New Edge to be in good working condition, New Edge will credit Customer in full for the price of the CPE. To return New Edge CPE, Customer shall (1) call or email New Edge Customer Care to receive a Return Materials Authorization number, and (2) ship the equipment back to New Edge (using shipping label provided and paid by New Edge). Risk of loss of New Edge CPE returned to New Edge remains with Customer until New Edge receives it.

- 12. 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. Surcharges may include, but are not limited to, universal service fund and telecommunications relay service charges.
- 13. Billing Dispute Process.** Customer shall notify New Edge of any billing dispute by emailing New Edge at [customercare@newedgenetworks.com](mailto: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.
- 14. 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.
- 15. 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](http://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.

- 16. 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.*
- 17. 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](mailto: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.*
- 18. 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 Service for convenience after its Service Commencement Date upon thirty (30)-days email notice addressed to [customercare@newedgenetworks.com](mailto:customercare@newedgenetworks.com). 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.*
- 19. 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.

- 20. 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.
- 21. 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.
- 22. 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.
- 23. 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.