



TERMS OF SERVICE

These Terms of Service (these "Terms of Service") govern the provision of all Services by DSL.net, Inc ("DSL.net") to any customer purchasing or subscribing to Services from DSL.net ("Customer") through any DSL.net service/sales order form and/or sales agreement (in written or electronic format, as the case may be) submitted by or on behalf of Customer to DSL.net (the "Agreement"). These Terms of Service are made an integral part of the Agreement and any other agreement which expressly incorporates these Terms of Service by reference. As used herein, the term "Service(s)" shall reference the various high-speed telecommunications data services offered by DSL.net, either via DS1 technology for T-1 service ("T-1 Service") or via digital subscriber line technology for DSL service (referred to herein as either "DSL," in general, "SDSL," in reference to DSL.net's standard, symmetric DSL service offerings, or "IDSL," in reference to DSL.net's limited provision of symmetric IDSL service; as the case may be, "DSL Service"), or via such other channels and technologies as DSL.net may make available for subscription hereunder, for Internet access and/or network connectivity purposes ("Connectivity Service"), together with any optional services (the "Optional Services"), all as subscribed to by Customer under the Agreement. DSL.net reserves the right, in its sole discretion, to reject any service order submitted by or on behalf of Customer.

1. **INSTALLATION & EQUIPMENT.**

In support of Connectivity Service, DSL.net shall install an end user circuit at the telephone company's recognized "minimum point of entry" or "local loop demarcation point" (the "MPOE") at Customer's premises where the Services are to be deployed (the "Premises"). For purposes hereof, a "Broadband Service Line" shall refer to any Connectivity Service circuit provisioned hereunder. DSL.net's basic installation responsibilities shall be limited to establishing connectivity between the MPOE and the DSL.net wide area network ("WAN") interface (the path over which available bandwidth shall be measured), testing of the circuit connection, and WAN-side installation of the supporting data service unit or Customer Premises equipment (e.g., a router, DSU or high-speed modem; the "CPE"), if such CPE has been obtained from DSL.net, subject to the other terms hereof. Subject to the next sentence, basic installation shall also include, if requested by Customer and deemed reasonable by DSL.net, running limited inside wiring from the MPOE to a CPE location at the Premises requested by Customer. Notwithstanding the foregoing, basic installation shall not include inside wiring in excess of 50 feet, inside wiring which would take more than 15 minutes to install, wiring across more than 1 floor of space at the given location, or any other extraordinary wiring or installation services, all as determined by DSL.net or its authorized contractors, all of which shall be billable at DSL.net's then current rates (on a time and materials basis), if requested by Customer and performed by DSL.net at its election. DSL.net shall not be responsible for wiring or configuring Customer's local area network. Additional service and maintenance (e.g., service calls, circuit downgrades/upgrades, non-basic inside wiring, etc.) are billable at DSL.net's then current rates (on a time and materials basis). If DSL.net determines that the installation requires non-basic wiring, DSL.net shall advise Customer and shall continue with the installation only after Customer's authorization. In the event Customer chooses not to authorize the non-basic wiring necessary for installation, Customer shall pay DSL.net the cancellation fee referred to in Section 3 below, whereupon such service order shall terminate without further liability to either party. Performance by DSL.net, at Customer's request, of any non-recurring services (e.g., non-basic installation, wiring or repairs, etc.) shall constitute conclusive evidence of Customer's agreement to be responsible for any charges associated therewith. All equipment provided by DSL.net in connection with Service (the "Equipment"), except for any CPE specifically purchased by Customer, shall be leased by DSL.net to Customer and shall remain DSL.net's property. As a condition to receiving Connectivity Service, Customer must purchase or lease, depending upon DSL.net's then current provisioning protocols, an appropriate model of CPE from DSL.net commensurate with the order for Service hereunder, or must provide its own compatible CPE. DSL.net may, in its discretion, use commercially reasonable efforts to perform WAN-side hook-up of Customer-provided CPE as part of installation services, however, Customer shall be responsible for any incompatibility or other performance issues associated therewith. In any event, DSL.net is not responsible for any Customer-provided CPE which may be utilized in connection with Service. All CPE purchased by Customer from DSL.net hereunder shall be "self administered" by Customer. Customer's use of the Services is location-specific to the Premises. The date and approximate time of installation shall be conveyed by DSL.net to Customer prior to installation. Customer represents and warrants that Customer has the right to grant access to the Premises. Customer hereby grants to DSL.net and its contractors a revocable license to enter onto the Premises for the purpose of installing the Equipment. Customer will cooperate in good faith to enable such installation. Customer is responsible for securing any licenses, permits, easements, rights-of-way or other third party consents necessary for installation. If Customer fails to do so and DSL.net is required to remove the Equipment, Customer shall bear the costs of disconnection and removal and any other associated costs incurred by DSL.net. DSL.net shall use commercially reasonable efforts to install the Equipment and provide the Services as promptly as practicable, but DSL.net shall not be liable for any delays in commencement of service.

Customer's sole remedy for any such delay shall be cancellation of the affected Service pursuant to Section 2 or Section 3 below.

DSL.net warrants to Customer that any Equipment obtained from DSL.net hereunder shall be free from defects in materials and workmanship for a period of 12 months from the date of installation (for purchased Equipment) or the term of service hereunder (for leased CPE), as the case may be. This warranty is limited to the original Customer and is not transferable. If any Equipment shall become defective during the warranty period, DSL.net shall, at its option, repair or replace such Equipment with comparable equipment (which may be reconditioned), provided it is reported (in the case of defective inside wiring) or returned (in the case of defective CPE) to DSL.net during the warranty period in accordance with DSL.net's return material authorization procedures. This warranty shall be void if, in DSL.net's determination, malfunction is the result of such Equipment having been abused, misused, repaired, modified or tampered with by, or accidentally damaged by, a party other than DSL.net or its authorized contractors. Any such repair or replacement of purchased Equipment will not extend the original warranty period; provided, however, that the warranty period for replacement parts for purchased CPE shall be the longer of 90 days or the balance of the original warranty period. If DSL.net determines that the Service failure is attributed to defective CPE, then this warranty shall be limited to the shipment by DSL.net of replacement CPE to the Premises and shall not include on-site re-installation which, if requested, shall be billable at DSL.net's then current rates (on a time and materials basis). All returned Equipment shall become property of DSL.net. Otherwise, Customer shall be solely responsible for any loss, theft, failure or damage of or to the Equipment while in Customer's possession or installed at the Premises. If Equipment malfunction is reported after expiration of the warranty period or is the result of a warranty exclusion, and Customer requests repair assistance from DSL.net, Customer shall be responsible for all applicable repair costs, including on-site assistance, if required, and Equipment purchase costs, at DSL.net's then current rates (on a time and materials basis). In the unlikely event that DSL.net determines that it cannot repair or replace the Equipment within a commercially reasonable period of time, then DSL.net may provide Customer with immediate written notice of termination of the affected Service or the Agreement, in DSL.net's discretion, without liability to either party and, in the case of purchased Equipment under warranty, DSL.net shall refund to Customer the pro-rated one-time fees paid to DSL.net which were attributable to such purchased Equipment (net of any previously issued discounts or credits), depreciated on a straight-line basis over a one-year term.

- 2. TERM. Connectivity Service.** The initial term for Connectivity Service is twelve (12) months for each Broadband Service Line. The billing period for each service (and, for Connectivity Service, the Initial Service Term) commences upon delivery by DSL.net of such service; provided, however, if delivery of a service is prevented or delayed by Customer, the billing period and term will commence on the date DSL.net notified Customer that DSL.net stood ready to deliver such service (e.g., if Customer does not grant access to DSL.net or its contractors to perform inside wiring upon such date and time proposed by DSL.net, then billing shall commence upon the date of circuit installation, regardless of non-performed CPE connection or extension of the primary point of demarcation). Following expiration of the Initial Service Term, Connectivity Service shall automatically continue on a month-to-month basis (i) until Customer provides DSL.net with one (1) month's prior written notice of cancellation, at which point all Services associated with such Broadband Service Line shall terminate effective as of the end of the immediately succeeding month, or (ii) until cancelled pursuant to the other terms hereof.

Optional Services. Prior to commencement of any given Optional Service, Customer may cancel the order for such pending Optional Service upon written notice to DSL.net without liability. All active Optional Services

shall be provided on a month-to-month basis. Customer may cancel any active Optional Service upon one (1) month's prior written notice, effective as of the end of the immediately succeeding month. Otherwise, all Optional Services provided in association with a given Broadband Service Line shall terminate automatically without liability to DSL.net upon the termination for any reason of Customer's underlying Broadband Service Line. Customer shall not incur any termination liability for cancellation of any active Optional Service, but Customer shall remain responsible for all charges associated with such Optional Service through the effective date of cancellation.

General. For purposes hereof, a "month" shall refer to a monthly billing period, and shall correspond to Customer's billing cycle and not necessarily to a calendar month. A termination of Connectivity Service by either party for any reason shall constitute a termination of all other Services associated therewith, and shall be subject to the applicable provisions of Section 3 below.

3. **TERMINATION OF SERVICE.** In the event DSL.net fails through no fault or delay of Customer to effect basic installation of Connectivity Service at the Premises within thirty (30) business days after the date of submission by Customer to DSL.net of a valid service order, then Customer may, at any time prior to delivery of Service, provide DSL.net with written notice of termination of the given order, and such order shall terminate without liability to either party. Customer may cancel Service at any other time upon one (1) month's prior written notice to DSL.net, subject to the terms hereof. If Customer cancels its order for Connectivity Service prior to commencement of Connectivity Service (other than due to DSL.net's delay as set forth above), then Customer shall be responsible for returning any Equipment provided by DSL.net in support of Service and for a \$450 (for T-1 Service cancellation) or \$225 (for DSL Service cancellation) cancellation fee. At DSL.net's election, Customer shall either permit DSL.net to enter the Premises at a mutually convenient time for the purpose of removing the subject Equipment or shall ship such Equipment back to DSL.net in accordance with DSL.net's return materials authorization procedures, at DSL.net's cost. DSL.net shall issue a refund to Customer for the purchase price paid by Customer for the returned Equipment within sixty (60) days of the Equipment's return to DSL.net, provided such Equipment is in good condition, reasonable wear and tear excepted, and in working order upon receipt by DSL.net. If, after commencement of Connectivity Service, but prior to expiration of the Initial Service Term, either (i) Customer cancels its Connectivity Service for any reason (including, without limitation, Customer relocation, but excluding timely notice of non-renewal under Section 2 above, and excluding cancellation due to material failure of Connectivity Service, as set forth in this Section 3 below), or (ii) DSL.net cancels Customer's Service because of a breach by Customer of the Agreement, then Customer shall pay to DSL.net a cancellation fee equal to 50% of the monthly recurring charge for the subject Connectivity Service then subscribed for by Customer, multiplied by the number of months remaining in the Initial Service Term (from and after the first full billing month following timely notice of termination hereunder). The parties agree to the foregoing liquidated damages as fair and reasonable compensation to DSL.net for early termination of Service and acknowledge and agree that such charges are not a penalty. Following commencement of Connectivity Service, if Customer shall experience a "material failure" in Connectivity Service through no fault of Customer, then Customer may, as its exclusive remedy (other than any applicable remedies afforded under DSL.net's then current Service Level Agreement), terminate the affected Connectivity Service (and all Services directly associated with such Connectivity Service) upon written notice of termination to DSL.net received prior to correction of the Service failure by DSL.net. For purposes hereof, a "material failure" in Connectivity Service shall have occurred if DSL.net fails to meet all the objectives stated in the applicable Service Level Agreement, as reasonably determined by Customer and verified by DSL.net pursuant to the terms of the Service Level Agreement, for any three (3) months out of a consecutive six (6) month period during the term. Customer's limited termination right hereunder for material failures in Connectivity Service is only exercisable within 30 days of the latest Service failure giving rise to such termination right. In the event of a termination of Connectivity Service by Customer upon a material failure in Connectivity Service, as aforesaid, Customer shall remain liable only for those charges due and owing hereunder through the date of DSL.net's receipt of written notice of the material, unremedied failure, and Customer shall not be responsible for the early termination penalty referred to above in this Section 3. Except as expressly set forth in this Section 3, upon timely notice of cancellation of Service, Customer shall remain liable for the full monthly recurring charges for the month when

notice of cancellation was provided and for any succeeding month covered by the one-month notice period. Upon cancellation of any given Service, Customer shall return to DSL.net all Equipment leased in support of any cancelled Services (including power cords and Ethernet cables), in the manner directed by DSL.net, at DSL.net's cost. In the event Customer fails to return the leased Equipment within 30 days of notice from DSL.net, Customer shall be liable to DSL.net for the full retail price of such Equipment then charged by DSL.net's supplier. DSL.net shall not be responsible for removing any associated wiring upon termination of any given Service. If Customer intends to vacate the Premises, Customer must provide DSL.net with notice terminating all Services to such Premises in accordance with these Terms of Service; any such action does not relieve Customer of any early termination fees or any other charges which may be owing hereunder. In the event DSL.net makes any material changes to its Service Level Agreement or Acceptable Use Policy from the versions posted as of the date hereof on DSL.net's website, www.dsl.net, which would reasonably be determined to have the effect of materially limiting Customer's use of the Services subscribed to hereunder or materially diminishing any Service credit remedies, Customer may terminate the affected Services upon written notice to DSL.net effective upon expiration of the then current billing period without incurring any early termination fees which might otherwise be assessable. Otherwise, Customer's continued use of the Services following any of such changes shall constitute Customer's acceptance thereof. DSL.net may, upon 45 days' notice to Customer (or such shorter period as applicable law may permit), discontinue delivery of any active Service hereunder due to engineering changes in the DSL.net network, a reduction in DSL.net's service area, or other commercial reasons, including lack of availability of relevant third-party facilities on commercially acceptable terms, without liability to either party. DSL.net may offer, and Customer may elect to accept, at each party's option, alternative service offerings to replace the discontinued Service (and any related Equipment). In the event of the discontinuance of any currently provisioned Service or Equipment, as aforesaid, Customer shall be relieved from any further recurring fees which would have otherwise been assessable for periods of service following the effective date of discontinuance and shall not be responsible for any early termination charges relating to such terminated Services, in each case for the affected Premises whose Services are subject to discontinuance hereunder. In addition, DSL.net reserves the right to reconfigure any existing Service, as long as the modified Service substantively conforms to the contracted Service offering and, in the event any such modification would reasonably be expected to result in reconfigurations on Customer's network (for which Customer shall be responsible), DSL.net shall use commercially reasonable efforts to provide Customer with prior notice thereof.

4. **AVAILABILITY.** Irrespective of any preliminary mapping, DSL.net's services may not be available at the Premises because of factors beyond DSL.net's control, such as the length or condition of telephone company lines. If DSL.net determines that it is unable to effect installation or provide service without undue cost or burden, DSL.net shall so advise Customer, whereupon the applicable service order shall terminate without liability to either party.

Due to DSL technology characteristics, the maximum DSL Service speed deliverable at the Premises cannot be finally determined until time of installation. In the event that tests authorized by DSL.net or its contractors upon installation indicate that the delivered DSL Service speed is not the ordered speed, Customer shall accept the next highest deliverable DSL Service level which DSL.net offers, at the applicable rate for such service. However, if the next highest deliverable DSL Service level is more than 1 level below the speed ordered, Customer may give DSL.net written notice of cancellation of such installed Broadband Service Line within 3 business days of installation, in which case such Broadband Service Line and all associated Services ordered therewith shall terminate without liability to either party. Otherwise, Customer shall be deemed to have accepted service upon installation, and cancellation beyond such 3-business-day period shall be subject to the terms of Section 3 above. In the event of the necessity of a speed downgrade, if SDSL Connectivity Service level is not available at the Premises, then the applicable order shall be cancelled without liability to either party and DSL.net may, in its discretion, offer Customer IDSL Connectivity Service at then current rates. Customer may not order an IDSL circuit unless SDSL Connectivity Service is not available. In the event of a downgrade to IDSL Connectivity Service, a downgrade charge and, if CPE must be exchanged, an IDSL CPE purchase charge may apply.

Once Connectivity Service has been established, if Customer requests a

speed upgrade for which it is eligible (i.e., increasing available bandwidth of an installed Broadband Service Line, without the necessity of installing a new end user circuit), an upgrade charge shall apply, and Customer's monthly recurring service fee shall be increased to account for the increased speed.

Connectivity Service speeds are measured across the end user circuit, from the primary point of demarcation to the DSL.net WAN interface, and do not guarantee available data throughput rates or that Customer will not experience latency caused by general Internet or network traffic.

5. **IP ADDRESSES.** DSL.net's ability to assign "IP addresses" is subject to restrictions on availability. DSL.net may require a "justification letter" and other supporting documents in order to secure the number of IP addresses requested by Customer. DSL.net reserves the right to deny requests for a number of IP addresses which DSL.net deems to be excessive. Customer has no property rights in the IP addresses assigned by DSL.net and cannot acquire such rights through usage, publication, announcement or otherwise. All IP addresses remain property of DSL.net, and Customer's right to use any given IP address shall terminate upon termination of the associated service.
6. **OPTIONAL SERVICES.** Optional Services are delivered over, or in association with, a subscribed Broadband Service Line and are thus only available to a customer who is also receiving Connectivity Service from DSL.net. Certain Optional Services may not be compatible with all other offered forms of Service (check with your DSL.net account representative for further information). Charges for any ordered Optional Services are in addition to those associated with Connectivity Service.

• **SECURITY PLUS / ROUTER FEATURES. General**

Description. Security Plus /Security Plus and Dial Backup. Router-based form of protection. DSL.net shall lease an appropriate router to Customer as CPE in support of the given Security Plus package. The fee for such leased router shall be included in the monthly recurring charges for the Security Plus Service. **Dial Backup (provided as part of the "Security Plus and Dial Backup Package").** Redundant Internet access via dial-up connection, accessible in the event of DSL Broadband Service Line failure. Customer may not use the user name or password associated with the dial backup account with any other equipment. Customer is responsible for all necessary supporting equipment (other than the CPE provided by DSL.net), such as active phone line. DSL.net shall not be responsible for any additional charges which Customer may incur from third parties through Customer's use of dial backup service (including, without limitation, any long distance telco charges). **DHCP Server.** DHCP is used to dynamically assign IP addresses to workstations. DHCP eliminates the administration of static IP addresses. **IP Filtering (port blocking).** IP filtering will, by default, allow all traffic that originates on the user's Local Area Network (LAN) to route out, but it will block most traffic directed into the LAN, unless the traffic is in response to traffic which originated within the LAN. **Network Address Translation (NAT).** NAT conceals a workstation's private IP address behind a public IP address with Internet access. If Customer is using an existing private IP address range and DOES NOT wish to change them, Customer must provide them to DSL.net in writing. If no IP addresses are specified, DSL.net will assign them. **Self Administration.** If Customer utilizes its own router in support of Service, or a router purchased from DSL.net hereunder, Customer is deemed to have elected the Self Administration option. Under this option, Customer shall be responsible for providing all router administrative services (including implementation of router security passwords), subject to the other terms hereof. For a Customer who is leasing a router from DSL.net, unless this option is selected, DSL.net will administer the leased router and will retain all passwords for the router. In the event Customer elects to self-administer its leased router, DSL.net will provide a password to Customer and shall thereafter have no further responsibility for the administration, configuration or performance of the leased router (except as otherwise provided hereunder), and Customer shall be responsible for providing all router administrative services. Customer may not select the "Self-Administration" option under the "Security Plus and Dial Back-up Package." **Standard Configuration.** A standard configuration is limited to enabling, or turning off, as the case may be, the basic DHCP, IP filtering and/or NAT functions of the router. **Custom Configuration.** Any configuration different from what would otherwise be routinely provided by DSL.net as part of the standard configuration services included with Service. All custom configuration requests must be approved by DSL.net. In the event Customer requests a custom configuration, DSL.net may elect, in its

discretion, to perform such configuration at DSL.net's then current rates, per configuration request.

Router Configuration (leased router). As part of any leased router service, unless Customer has elected "Self Administration," DSL.net will provide initial configuration of the CPE leased by DSL.net so as to permit connectivity with DSL.net's network (for which Customer shall be responsible for DSL.net's appropriate one-time charges) in accordance with those configuration options made available by DSL.net and elected by Customer upon submission of its order (prior to installation), will support unlimited standard configuration changes to the leased router upon request by Customer, and will make available to Customer any relevant CPE software updates provided to DSL.net by the CPE's manufacturer or licensor for use by end users.

Router Configuration (purchased router). As part of Service, DSL.net will provide initial configuration, as described herein, of the CPE sold by DSL.net hereunder so as to permit connectivity with DSL.net's network, in accordance with those configuration options made available by DSL.net and elected by Customer upon submission of its order (prior to installation). Customer shall be responsible for the appropriate one-time charges required under the Agreement, as applicable. Aside from configuration performed as part of initial CPE set-up, DSL.net shall have no responsibility to perform any further configurations for Customer. Any subsequent configuration requests shall be subject to DSL.net's Custom Configuration protocols.

• **NETgain DIAL.** Internet access via dial-up connection. Instructions for activation of service are posted on DSL.net's website, or, if Customer so requests, will be provided to Customer. Customer is responsible for all other supporting equipment, such as active phone line and modem, necessary to receive such service. A list of available local access numbers, by region, is posted on DSL.net's website (or may be provided to Customer on request); Customer shall be responsible for choosing which number(s) to use for dial-in access, and DSL.net shall not be responsible for any additional charges which Customer may incur from third parties through Customer's use of dial-up service (including, without limitation, any long distance telco charges). Customer and DSL.net shall coordinate regarding the assignment of any requisite user names and passwords, subject to Section 9 of these Terms of Service and DSL.net's operating protocols. The security products described in this Section 6 are not available for use with the NETgain Dial service.

• **NETgain SECURE FIREWALL.** This product is a network-based firewall which uses "state-aware" packet inspection technology to provide (i) a "port blocking" service which allows, by default, all traffic that originates on the user's LAN to route out, but blocks most traffic directed into the LAN, unless the traffic is in response to traffic which originated within the LAN; and (ii) a level of protection against "denial of service attacks" (i.e., flooding a network connection with useless traffic) and "IP spoofing" (i.e., sourcing unauthorized traffic to and from a computer by modifying packet headers to spoof a trusted host's IP address).

• **ROUTER PURCHASE.** Limited to the sale of specific routers then made available for purchase by DSL.net (only routers which are compatible with DSL.net's network will be made available for purchase hereunder), and subject to availability. Customer shall be responsible for providing all router administrative services, including implementation of router security passwords, except to the extent any of such functions are contracted for by Customer to be performed by DSL.net pursuant to the other provisions of the Agreement.

• **WEB HOSTING.** DSL.net's web hosting services are limited to the provision of disk space and DNS services for Customer's website. DSL.net is not responsible for the creation and/or maintenance of Customer's website, or the maintenance of any back-up copy of such website.

• **E-MAIL.** DSL.net provides Customer with up to 10 e-mail boxes as part of Customer's subscription to Connectivity Service. Customer may also purchase the use of additional e-mail boxes and other enhancements, at then current pricing.

• **LIVEVAULT.** On-line data back-up and recovery service, provisioned pursuant to a separate service agreement; an initial minimum term commitment shall apply.

• **NETlink / NETlink Plus** NETlink service is a form of virtual, routed, private network (“VPN”) service established between or among designated, installed Premises on DSL.net’s network. Customer acknowledges that DSL.net can not transmit multiple protocols (i.e.: SNA) via its network, and that the data protocol supported hereunder shall be IP-only. Network connectivity and access shall be supported by DSL.net’s Broadband Service Lines, with such relevant supporting CPE as DSL.net shall so determine in order to complete the installation. Customer shall provide DSL.net with such relevant assistance and information as DSL.net shall request in furtherance of establishing such services for Customer. Customer acknowledges and agrees that the final technical configuration of the delivered NETlink service may deviate from that which may have been previously described or proposed by DSL.net in any documentation (including, without limitation, network configuration/VPN diagrams) furnished to Customer, based upon technical limitations and/or subsequent information communicated by Customer. NETlink Service is available with or without Internet access, but NETgain Secure Firewall must be ordered for all VPN locations included in the VPN cluster if any one location requires Internet access. NETlink Plus includes the managed NETlink VPN service, NETgain Secure Firewall and Security Plus (router lease). Prices quoted are for each location.

7. **CHARGES.** Customer shall pay all of DSL.net’s invoices for all charges in connection with the Services and Equipment, including, but not limited to, late payment fees, charges for returned or “bounced” checks, charges and expenses incurred following a payment default by Customer and in connection with an account delinquency (including, without limitation, collection agency fees), reasonable attorneys’ fees and expenses in connection with enforcement of the Agreement, and applicable termination charges (provided, DSL.net may recoup such attorneys’ fees and expenses only if DSL.net prevails, in whole or in part, in any action, claim, suit, hearing or dispute for which such counsel was engaged). All payments shall be made to DSL.net at the address indicated in each invoice. Customer shall be responsible for all applicable, invoiced federal, state, and local mandated surcharges, fees, universal service contributions, if any, and taxes applicable to the purchase of Services and Equipment under the Agreement (other than taxes attributable to DSL.net’s income), other than those exempted under a valid tax exemption certificate which has been previously presented by Customer to DSL.net. Recurring service charges are billed monthly, in advance; provided, however, service charges for an initial partial month of service will be pro-rated and, at DSL.net’s election, may be billed on the first recurring monthly bill. For each month after the initial partial month of service, the full monthly fee is due for any part of a month in which the applicable service is provided, except in instances where Customer has terminated service following the Initial Service Term upon at least 30 days’ written notice in accordance herewith, in which case recurring service charges for the final month of service during which service is to terminate will be pro-rated to the effective date of termination, and except as otherwise provided herein. Non-recurring charges, such as charges for service calls, technical assistance, configuration requests, repairs or inside wiring, will be billed as incurred. DSL.net may require prepayment or a security deposit as a condition to providing certain one-time services or, if Customer is delinquent in its payment obligations, recurring services, and DSL.net reserves the right to recoup any prepayments or security deposits at any time. Charges incurred by Customer for services based upon actual usage may be billed by DSL.net on a subsequent bill. Payment in full is due upon receipt of invoice. Payments not made within 30 days of the date of invoice will accrue interest from the invoice date to the date of full payment at a rate that is the lesser of (i) 1.5% per month or (ii) the highest rate permitted by applicable law. If Customer has elected to pay via credit card, Customer authorizes DSL.net to debit Customer’s credit card for all amounts due hereunder, except that recurring charges shall be debited at the commencement of the applicable billing period. If Customer disputes any charges, Customer must notify DSL.net within 60 days of the invoice due date or such claim shall be waived. All items not in dispute must be paid when due. The parties shall cooperate with each other in good faith to promptly resolve any disputes. Notwithstanding the foregoing, if Customer has not brought its account current to DSL.net’s satisfaction within 10 days of DSL.net’s written notice to Customer of Customer’s delinquency, DSL.net may terminate the Agreement and all Services or suspend Service without further notice. If any Service, or the Agreement, is terminated by DSL.net for reasons other than Customer breach, or by Customer because of a material failure in Connectivity Service, as aforesaid, DSL.net shall issue a ratable credit or refund to Customer for any monthly recurring service charges which may have been prepaid by Customer for periods of service

after the effective date of such termination. Except as expressly set forth herein, all fees and charges are nonrefundable.

If, during the Initial Term or the Initial Service Term, as the case may be, DSL.net determines that DSL.net’s (or its affiliates’) costs for providing Services have increased (as reflected by one or more increases in the prices charged by its or their direct or indirect suppliers for telecommunications circuits or facilities and/or network connectivity) as a result of, or in response to, the adoption, injunction, rescission, or modification of any governmental rule, law or regulation or applicable tariff (whether by legislative, administrative or adjudicatory action), DSL.net may, upon 45 days’ prior written notice to Customer, impose an increase in the prices it charges to Customer for affected Services hereunder. Customer agrees to be responsible for any pricing increase to an affected Service implemented under this paragraph; provided, that, any such increase, when aggregated with all other previous increases implemented under this paragraph, if any, for such affected Service, does not exceed 20% of the contracted price for such affected Service in effect upon commencement of the Initial Service Term or Initial Term, as the case may be. If any such price increase imposed by DSL.net would result in the increase percentage being more than the aforementioned 20%, then Customer shall have the right to dispute such increase by written notice thereof to DSL.net delivered within 15 days following the date of DSL.net’s notice to Customer of the pending price increase. If, following DSL.net’s receipt of such dispute notice, the parties cannot, in good faith, resolve such dispute within 10 days thereafter, Customer shall thereupon have the right, upon specific written notice thereof to DSL.net received at least 10 days prior to the proposed effective date of the price increase, to terminate the Services affected by the proposed price increase without penalty, which termination shall become effective immediately prior to the proposed effective date for said price increase. For avoidance of doubt, any continued use by Customer of the Services affected by the price increase after the 45th day following the date of DSL.net’s written notice thereof to Customer, or failure to timely dispute the increase, shall be deemed acceptance of the new prices.

DSL.net reserves the right to modify pricing for any active Service then being provided to Customer following the expiration of the Initial Service Term upon 45 days’ prior written notice to Customer. Customer shall have the right to dispute such increase by written notice thereof to DSL.net delivered within 15 days following the date of DSL.net’s notice to Customer of the pending price increase. If, following DSL.net’s receipt of such dispute notice, the parties cannot, in good faith, resolve such dispute within 10 days thereafter, Customer shall thereupon have the right, upon specific written notice thereof to DSL.net received at least 10 days prior to the proposed effective date of the price increase, to terminate the Services affected by the proposed price increase without penalty effective immediately prior to the proposed effective date for said price increase. For avoidance of doubt, any continued use by Customer of the Services affected by the price increase after the 45th day following the date of DSL.net’s written notice thereof to Customer, or failure to timely dispute the increase, shall be deemed acceptance of the new prices.

Customer agrees that DSL.net may utilize credit reports on Customer in order to perform a credit review as part of Customer’s qualification process. As a result of such credit check, DSL.net reserves the right to deny credit privileges or set appropriate credit limits, including, but not limited to, requiring Customer to provide payment in advance or a security deposit. In the event that an order for relief is entered against Customer by any bankruptcy court, the Agreement shall be deemed to be an executory contract for bankruptcy purposes. In connection therewith, as a condition to the continuation of service to Customer as a debtor-in-possession, DSL.net reserves the right to require monthly prepayment of services and/or a deposit from Customer representing no less than two months’ of contracted monthly recurring service charges (plus usage-based charges as averaged over the prior six months of service), and may terminate or suspend service with or without further notice in the event such payment terms are not complied with by Customer.

8. **LIMITED WARRANTY; LIMITATION OF LIABILITY.** DSL.net will guarantee the Connectivity Services to the extent of the Service Level Agreement as in effect from time to time for the given Service, as posted on DSL.net’s website. EXCEPT AS OTHERWISE EXPLICITLY SET FORTH HEREIN AND IN THE APPLICABLE SERVICE LEVEL AGREEMENT, ALL EQUIPMENT AND SERVICES ARE PROVIDED TO CUSTOMER ON AN “AS IS” BASIS, AND CUSTOMER’S USE THEREOF IS ENTIRELY AT CUSTOMER’S RISK, AND DSL.NET

HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESSED, IMPLIED OR STATUTORY, OR ARISING BY CUSTOM, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT DSL.NET DOES NOT EXERCISE CONTROL OVER THE CONTENT OR INFORMATION PASSING THROUGH THE INTERNET IN CONNECTION WITH THE SERVICES, NOR DOES DSL.NET TAKE ANY RESPONSIBILITY FOR THE ACCURACY, QUALITY OR NATURE OF THE INFORMATION OBTAINED THROUGH THE SERVICES. EXCEPT FOR CUSTOMER CLAIMS OR DAMAGES ATTRIBUTABLE SOLELY AND DIRECTLY TO VIOLATIONS OF LAW BY DSL.NET OR THE NEGLIGENCE OR WILFULL MISCONDUCT OF DSL.NET OR ITS AUTHORIZED CONTRACTORS IN CONNECTION WITH THE ON-SITE INSTALLATION OR REPAIR OF SERVICES OR EQUIPMENT ORDERED HEREUNDER OR CLAIMS THAT THE SERVICES OR EQUIPMENT OBTAINED FROM DSL.NET HEREUNDER VIOLATE A THIRD-PARTY'S INTELLECTUAL PROPERTY RIGHTS, UNDER NO CIRCUMSTANCES SHALL DSL.NET OR ANY OF DSL.NET'S AFFILIATES OR SUPPLIERS BE HELD RESPONSIBLE FOR ANY DAMAGES OR LOSSES SUFFERED BY CUSTOMER OR AN END USER AS A RESULT OF DSL.NET'S PERFORMANCE OR DELIVERY OF SERVICES OR CUSTOMER'S OR AN END USER'S DIRECT OR INDIRECT USE OF OR SUBSCRIPTION TO ANY OF DSL.NET'S PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF INFORMATION OR INTERRUPTIONS IN SERVICE, OR DAMAGES ALLEGED TO HAVE RESULTED FROM DELAYS IN PROVIDING PRODUCTS OR SERVICES OR BECAUSE OF THE INADEQUACY OR LIMITED IMPLEMENTATION OF ANY SECURITY FEATURES, SERVICES OR EQUIPMENT SOLD, PROVIDED, ADMINISTERED OR ARRANGED BY DSL.NET), EVEN IF DSL.NET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT SERVICE MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED OR EMERGENCY MAINTENANCE, AND THAT NO COMPENSATION SHALL BE DUE OR OWING FROM DSL.NET TO ANY PARTY AS A RESULT THEREOF. DSL.NET RESERVES THE RIGHT TO SUSPEND SERVICE WITHOUT NOTICE IN THE EVENT OF ANY EXIGENT CIRCUMSTANCES AFFECTING DSL.NET'S ABILITY TO PROVIDE SERVICE OR IN THE EVENT THAT DSL.NET DETERMINES THAT, FOR TECHNICAL REASONS, AN IMMEDIATE SUSPENSION OF SERVICE IS REQUIRED IN ORDER TO PREVENT CUSTOMER'S USE OF SERVICE FROM ADVERSELY AFFECTING THE EFFECTIVENESS OF THE SERVICE FOR OTHER CLIENTS OF DSL.NET OR TO PRESERVE SYSTEM INTEGRITY OR PREVENT NETWORK ABUSE, IN EACH CASE, WITHOUT LIABILITY TO ANY PARTY. IN NO EVENT SHALL DSL.NET'S LIABILITY FOR ANY CLAIM HEREUNDER EXCEED THE AGGREGATE AMOUNT OF SERVICE CHARGES PAID UNDER THE AGREEMENT TO DSL.NET BY CUSTOMER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE GIVEN CLAIM, NET OF ANY CREDITS OR REFUNDS.

9. **CUSTOMER RESPONSIBILITY.** Customer is responsible for protecting all account passwords and for any authorized or unauthorized use made of the services and products provided hereunder. Customer shall comply with the rules appropriate to any network to which Customer may gain access via the Services. Customer may not resell the Services (or any part thereof) unless DSL.net consents in writing. Customer shall use the Services only for lawful purposes and in a manner consistent with the terms of the Agreement and DSL.net's Acceptable Use Policy as in effect from time-to-time, as posted on DSL.net's website. Any failure to do so shall be deemed a breach of the Agreement. Customer acknowledges that posting a changed Acceptable Use Policy or Service Level Agreement on DSL.net's website will be sufficient notice to Customer of changes thereto. DSL.NET MAY, UPON PRIOR NOTICE, CANCEL OR, WITHOUT PRIOR NOTICE, SUSPEND SERVICE OR TAKE ANY OTHER APPROPRIATE ACTION AT DSL.NET'S SOLE DISCRETION, FOR BREACHES OF THE AGREEMENT, INCLUDING DSL.NET'S ACCEPTABLE USE POLICY. Customer understands that Customer is responsible for complying with the eligibility requirements established by DSL.net in order to participate in any written, DSL.net-authorized rebate program made available from time to

time in DSL.net's discretion. Unless Customer advises DSL.net otherwise in writing, Customer grants DSL.net permission to send (via e-mail or other methods) Customer periodic notices on DSL.net products and services, promotional and special offers and/or industry news.

10. **INDEMNITY.** Customer shall indemnify, reimburse and hold harmless DSL.net, its directors, officers, stockholders, employees, agents, suppliers, contractors and representatives from and against any liability, loss, damage or expense, including court costs and reasonable attorneys' fees and expenses, arising out of or in connection with any actual or threatened claim, suit, action or proceeding brought by any third party relating to the (i) breach or alleged breach by Customer (or its end users or those accessing the Services through Customer, whether authorized or not) of the Agreement or DSL.net's Acceptable Use Policy or (ii) use or misuse of the Services (including, without limitation, configuration changes made to a DSL.net-managed or leased router by parties other than DSL.net) by Customer or anyone accessing DSL.net's network or services through Customer, whether or not authorized. Subject to Section 8 of these Terms of Service, DSL.net shall indemnify, reimburse and hold harmless Customer, and its directors, officers, stockholders, employees, agents, suppliers, contractors and representatives, from and against any liability, loss, damage or expense, including court costs and reasonable attorneys' fees and expenses, arising out of or in connection with any actual or threatened claim, suit, action or proceeding brought by any third party to the extent resulting from a violation of law by DSL.net or arising from or relating to any claim that the Services provided by DSL.net hereunder violate any proprietary rights of any third party or any claim arising out of personal injury or tangible property damage caused by the negligence or willful misconduct of DSL.net or its agents in entering onto a Premises during the course of providing Installation or repair services.
11. **FORCE MAJEURE.** Neither DSL.net nor its suppliers shall be liable, nor shall it constitute a material failure of Service or breach of the Agreement, to the extent that performance of DSL.net's obligations are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riot, act of government, third party nonperformance (including, without limitation, the failure or delay of common carriers, interexchange carriers, local exchange carriers, suppliers and subcontractors), or any other cause beyond DSL.net's reasonable control. In the event a force majeure event causes a material interruption in Service which continues unremedied by DSL.net for 30 days, Customer may terminate the affected Service upon written notice to DSL.net without liability to either party and shall only remain liable for charges accrued through the last date of service prior to the occurrence of the force majeure event.
12. **GOVERNING LAW.** The Agreement shall be governed by the laws of the State of Connecticut (without regard to its principles of conflicts of laws), applicable federal laws and any applicable state or federal tariffs. Actions to enforce the Agreement shall be brought only in a state or federal court located in the State of Connecticut. Each party irrevocably waives the right to a jury trial in connection with any legal proceeding relating to the Agreement. DSL.net's performance hereunder shall be subject to applicable governmental rules and regulations and tariffs filed by DSL.net or its affiliates with governing regulatory authorities. In the event of a conflict between the terms of any applicable tariff, rule or regulation and the Agreement, the tariff, rule or regulation shall control. The parties confirm that the Agreement is a commercial transaction between willing commercial contract parties.
13. **CONFIDENTIALITY.** Each party agrees to protect the other's Confidential Information (as defined below) from unauthorized or unlawful dissemination and use with the same degree of care that such party uses to protect its own Confidential Information and, in any event, at least a reasonable degree of care. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of the Agreement or the provision of Service. Each party will use its commercially reasonable best efforts not to disclose to third parties the other's Confidential Information without the prior written consent of the other party. Notwithstanding the foregoing, each party may disclose the other's Confidential Information to its employees, consultants, contractors, suppliers, affiliates, and its legal and financial advisors on a need to know basis as required in the ordinary course of that party's business and to further the transactions contemplated hereby, provided that such parties agree to be bound by confidentiality restrictions materially similar to those set forth in this Section, and may disclose Confidential Information in order to comply with governmental or judicial orders and requests by law enforcement

agencies. Further, the parties acknowledge that the Agreement, or portions hereof, may be required to be disclosed under applicable law or the regulations of an applicable securities market or exchange. If disclosure of the other party's Confidential Information is required by governmental or judicial order, or requested by law enforcement authorities, the revealing party will notify the other in writing, and, if requested by such other party, the parties will jointly seek confidential treatment of such Confidential Information to the maximum extent reasonably possible (at the cost of the party desiring confidential treatment); however, it is understood that a party may acknowledge the existence and general nature of the Agreement without any obligation to contact the other party or seek confidential treatment. For purposes hereof, "Confidential Information" means: (i) any trade secrets or other non-public information relating to either party's products or services, including plans, designs, costs, prices, pricing discounts or concessions, finances, service areas, customers, marketing plans, web tools, business opportunities, personnel, research, development or know-how; and (ii) the specific terms and conditions of the Agreement. "Confidential Information" shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party; or (iv) is lawfully obtained from a third party that has the right to make such disclosure. Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure or use of Confidential Information and that each party may seek, without waiving any other rights or remedies, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

14. **MISCELLANEOUS.** The Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. Customer may not assign its rights or obligations under the Agreement without DSL.net's prior written consent, and attempted assignments without such consent shall be void. The Agreement, together with DSL.net's Acceptable Use Policy and Service Level Agreement, each as in effect from time to time (as posted on DSL.net's website), constitute the entire agreement between the parties regarding DSL.net's provision of Services hereunder, and shall supersede any other or prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, whether oral or written, with respect to the subject matter hereof. To the extent DSL.net permits a change order to be processed with respect to the Services being provided to Customer hereunder (e.g., if, during the term, Customer requests a service speed upgrade for which Customer may be eligible or requests additional e-mail boxes), the Services, as revised, shall remain subject to the applicable terms of the Agreement, unless DSL.net specifies otherwise, in which case such modified terms shall apply to the extent of any conflict (e.g., to account for any higher-priced or additional services). Customer acknowledges and agrees that DSL.net shall have the right to rely upon any service order or signature placed with DSL.net on Customer's behalf under the Agreement or to the Agreement as being valid and binding upon Customer, notwithstanding Section 2 hereof, and Schedule 2 hereto. The Agreement may not be amended or modified except pursuant to a written instrument signed by both parties. Upon Customer breach, DSL.net may pursue any remedies available to it at law or in equity, and any remedies afforded DSL.net under the Agreement shall be cumulative and not exclusive in nature. Nothing expressed or implied in the Agreement is intended, or shall be construed, to confer upon or give any person, firm or entity other than the parties hereto any rights or remedies under or by reason of the Agreement. Headings used herein are used only for descriptive convenience and have no independent legal effect or connotation. The Agreement may be executed (manually or electronically) in counterparts, and transmitted via facsimile transmission or via other authorized electronic format, with all such counterparts constituting one and the same instrument. Nothing in the Agreement shall be construed as creating an employer-employee or agency relationship, a partnership, or a joint venture between the parties. Each of the individual signatories to the Agreement represents and warrants to the other party that such signing party has all legal right and authority to execute and deliver the Agreement on behalf of the indicated entity. Without limiting the foregoing, Customer's signatory agrees to submit written documentation, acceptable to DSL.net, of its appointment of agency from the applicable grantor/purchaser of Services if the individual executing the Agreement on behalf of and in the name of Customer is doing so in his/her capacity as an authorized agent (e.g., a "systems integrator") of Customer. The term "business day(s)" shall refer to any weekday other than a national holiday. DSL.net shall not be deemed as a consequence of any act, delay, failure, omission, forbearance or other

indulgence granted from time to time to have waived, or to be stopped from exercising, any of its rights or remedies hereunder or to have modified, terminated or rescinded any of the terms of the Agreement, unless such waiver, modification, termination or rescission is set forth in writing and signed by DSL.net. A waiver expressly made in writing on one occasion will be effective only in that specific instance and only for the precise purpose for which given. A delay or failure in billing by DSL.net for any given service provided hereunder shall not operate as a waiver or estoppel of its right to be paid for those services. If any provision shall be held to be invalid or unenforceable by any court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby and shall be enforced to the fullest extent permitted by law. A given Service order placed hereunder shall be deemed accepted by DSL.net, subject to the other terms of the Agreement, once confirmed via "welcome call," e-mail or other similar communication. Termination of the Agreement shall not relieve the parties of obligations accruing prior to the effective time of termination, nor terminate or render void any provisions, which, by their logical context, would reasonably be expected to survive termination of the Agreement (including, without limitation, Sections 7, 8, 9, 10, 11, 12, 13 and 14 of these Terms of Service) as necessary in order to resolve any claims or disputes between the parties. Service may be provided by DSL.net or its affiliates, or through authorized contractors. Certain services furnished by DSL.net hereunder may be supported or provided by DSL.net's third-party suppliers. All notices, requests, and demands hereunder shall be given in writing and shall be deemed to have been given on the date of delivery, if delivered in person, on the next business day, if sent by nationally recognized overnight courier (charges prepaid), on the third business day after deposit in the U.S. mail, if sent by certified or registered mail, return receipt requested, or upon receipt of electronic confirmation, if sent by electronic mail, facsimile or other electronic means that provides evidence of receipt, addressed to the party, in the case of Customer, at the billing address set forth in the Agreement, or, in the case of DSL.net, to DSL.net, Inc. at 50 Barnes Park North, Wallingford, CT 06492, Attention: Customer Service Dept. (or such other address as is then posted on its website), as the case may be, or to such other address as either party shall have most recently notified the other of in writing (including any applicable e-mail addresses posted on DSL.net's website or provided by Customer hereunder). Customer is responsible for providing DSL.net with timely written notice of any billing address changes. Unless Customer has otherwise notified DSL.net in writing, Customer permits DSL.net to send it periodic notices on DSL.net products and services, promotional and special offers and/or industry news.

By submitting Customer's order for Services, Customer acknowledges its understanding of, and agrees to comply with the terms of, the Agreement, the Acceptable Use Policy, DSL.net's Copyright Violations Policy (available on the DSL.net website or upon written request), and any written, DSL.net-authorized rebate/promotional offer and all related eligibility requirements.

For Customers accepting these Terms of Service via on-line process, you must agree to these Terms of Service in order to receive ordered Services. If you wish to accept Service on these terms and continue with your order, please click the "I AGREE" icon below. Otherwise, if you do not wish to proceed with your order on these terms, click the "I DON'T AGREE" icon below, and your order will be cancelled. By clicking "I AGREE," you authorize DSL.net to begin provisioning your order in accordance with the Agreement.