

## Standard Terms and Conditions for NETgain One Service

**1. Service.** These Standard Terms and Conditions for NETgain One Service (these "Terms and Conditions") apply to all service orders for NETgain One Service (each, a "Service Order") submitted by a NETgain One Service subscriber (each, a "Customer") to, and accepted by, DSL.net, Inc. ("DSL.net"). These Terms and Conditions govern DSL.net's provision of, and Customer's subscription to, the converged voice and data communications services provided by DSL.net as "NETgain One Service(s)," as set forth in the applicable Service Order(s) entered into between DSL.net and Customer from time to time for such services. These Terms and Conditions, together with the documents expressly referred to herein and in each Service Order, including without limitation DSL.net's Service Level Agreement for NETgain One Service, DSL.net's Acceptable Use Policy, and DSL.net's Ancillary Terms and Rates for NETgain One Service, each in the form then posted on DSL.net's Web site from time to time, are hereinafter referred to, collectively, as the "Service Agreement." In the event of a conflict between these Terms and Conditions and a given Service Order, the Service Order shall prevail. The NETgain One Service, together with listed optional services compatible therewith ("Optional Services"), are hereinafter referred to collectively as the "Services." The equipment, products or materials to be sold, licensed or leased to Customer, depending upon DSL.net's then-current provisioning protocols, pursuant to a Service Order, including any terminating or protocol conversion equipment or service unit in support of Service, are hereinafter referred to as the "Equipment." References herein to DSL.net's Web site shall refer to [www.dsl.net](http://www.dsl.net) (or such identified successor site).

**2. Term.** Unless otherwise expressly set forth on a Service Order for a given location, each order for NETgain One Service shall carry an initial term commitment of twenty-four (24) months from the Effective Service Commencement Date, as defined below (the "Initial Term"), and shall thereafter renew automatically on a month-to-month basis for successive monthly periods, unless and until terminated in accordance with these Terms and Conditions. Optional Services shall be provided on a month-to-month basis. Termination of NETgain One Service prior to expiration of the Initial Term may subject Customer to early termination fees, as described below. The billing period for each Service 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) (the "Effective Service Commencement Date"). Subject to the termination rights and obligations of the parties set forth herein, and the other express provisions of these Terms and Conditions, the Service Agreement (and each Service Order thereunder) shall continue in full force and effect until terminated in accordance with these Terms and Conditions. Termination of the Service Agreement, a Service Order or Service, as the case may be, shall not relieve the parties of their respective obligations accruing prior to the effective time of termination.

**3. Billing and Payment.** Customer is responsible for the payment of all charges for Services furnished by DSL.net under the Service Agreement at rates set forth on the applicable Service Order(s) and, for certain services not included in the Service package, at the rates set forth in the Ancillary Terms and Rates for NETgain One Service, posted from time to time on DSL.net's Web site. Except as expressly set forth herein, all fees and charges are nonrefundable.

Customer shall pay all of DSL.net's invoices for all charges in connection with the Services and Equipment provided hereunder, including, but not limited to, interest on delinquent payments, charges for returned or "bounced" checks (at the depository bank's rate), collection agency fees and expenses incurred following a payment default by Customer and in connection with DSL.net's pursuit of settlement of an account delinquency, reasonable attorneys' fees and expenses in connection with enforcement of the Service Agreement (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), and termination charges described herein. All payments shall be made to DSL.net at the address indicated in each invoice. Customer shall be responsible for paying DSL.net 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 Service 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 billing month in which the applicable service is provided (except as otherwise provided herein). Charges incurred by Customer for services based upon actual usage may be billed by DSL.net on a subsequent bill. 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, and DSL.net reserves the right to recoup any prepayments or security deposits at any time.

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 provided DSL.net with credit card information for billing purposes, then DSL.net may debit Customer's credit card for all amounts due hereunder (with recurring charges to be debited at the commencement of the applicable billing period).

If Customer disputes any charges, Customer must notify DSL.net within 60 days following the date of the disputed charge 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 Service Agreement and all Services or suspend Service without further notice. If any Service, or the Service Agreement, is terminated by DSL.net for reasons other than Customer breach, or by Customer because of a material failure in Service, 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. Suspension of Service by DSL.net because of Customer breach of, or as permitted under, the Service Agreement shall not suspend Service fees nor entitle Customer to a credit for the period of the suspension.

DSL.net reserves the right to modify pricing for any Service then being provided on a month-to-month basis upon 30 days' prior written notice, in which case Customer may terminate such Service without penalty following such notice upon written notice to DSL.net received prior to the next billing cycle or effective date of such change, unless DSL.net elects to waive the application of such price modifications, in which case Customer's cancellation notice shall be deemed revoked. Customer shall be deemed to have accepted such modified pricing upon delivery of such Service following the effective date of such modification; DSL.net's continued provision of such Service 5 business days following its receipt of any written notice of termination shall constitute DSL.net's waiver of the application of the proposed modified terms to Customer and revocation of Customer's cancellation notice. Nothing in this Section 3 shall be deemed to conflict with or impair DSL.net's right to occasionally, from time to time, upon publication on DSL.net's Web site, adjust the charges set forth in the Ancillary Terms and Rates for NETgain One Service.

Customer agrees that DSL.net may utilize any type of credit report 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 Service 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 a deposit from Customer representing no less than two months' Service charges (as averaged over the prior six months of

Service, or based on the contracted monthly recurring charge for fixed rate contracted Services if less than six months, as the case may be), and may terminate or suspend Service with or without further notice in the event such payment terms are not complied with by Customer.

**4. Service Relocation.** Customer's use of the Services is location-specific to the site indicated in the Service Order for deployment of the Services (the "Premises"). If Customer elects to relocate the Premises after installation of facilities, Customer must submit a new Service Order for the new location and shall pay any installation and activation charges associated with delivery of Service to the new location. If Customer intends to vacate or relocate the Premises, Customer must provide DSL.net with notice terminating all Services to the installed location in accordance with these Terms and Conditions; any such action does not relieve Customer of any early termination fees which may be owing hereunder.

**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. Delivery of Service.** In support of 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 the Premises. 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 Equipment, if such Equipment has been obtained from DSL.net, subject to the other terms of the Service Agreement. 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 an Equipment 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. Customer shall be responsible for the early termination charges referred to in these Terms and Conditions if Customer cancels its order during the installation process rather than authorizing and incurring charges for any non-basic wiring which may be required. 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.

In order to facilitate configuration of Equipment and ensure its compatibility with DSL.net's network, DSL.net reserves the right to require Customer, as a condition to receiving Service, to purchase or lease, as indicated in the Service Order, certain Equipment (of a make and model deemed appropriate by DSL.net for Service) from DSL.net. DSL.net shall not be responsible for the operation or maintenance of any Customer provided equipment. Equipment leased to Customer under a Service Order shall remain property of DSL.net and be returned to DSL.net by Customer in good condition, reasonable wear and tear excepted, upon termination of Service pursuant to DSL.net's return materials authorization procedures, or, at DSL.net's option, Customer shall allow DSL.net personnel to remove all DSL.net-owned equipment from the Premises. All title to Equipment sold to Customer under a Service Order shall remain with DSL.net until payment of the full, invoiced purchase price associated with such Equipment, as indicated on the Service Order. Title to all facilities (except such Equipment sold to a Customer under a Service Order) shall remain with DSL.net. The electric power consumed by any Equipment on the Premises of Customer shall be provided by and maintained at the expense of Customer.

DSL.net warrants to Customer that any Equipment purchased from DSL.net hereunder, and all inside wiring installed in support of Service, shall be free from defects in materials and workmanship for a period of one (1) year from the date of installation. This warranty is limited to the original Customer and is not transferable. If any Equipment or wiring shall become defective during the warranty period, DSL.net shall, at its option, repair or replace such materials with comparable materials (which may be reconditioned), provided it is reported (in the case of defective inside wiring) or returned (in the case of defective Equipment) to DSL.net during the warranty period in accordance with DSL.net's return materials authorization procedures. This warranty shall be void if, in DSL.net's determination, malfunction is the result of such Equipment or wiring 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 will not extend the original warranty period. If DSL.net determines that the Service failure is attributed to defective Equipment, then this warranty shall be satisfied by the shipment by DSL.net of replacement Equipment 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 and wiring while in Customer's possession or installed at the Premises. If Equipment or wiring 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 or wiring within a commercially reasonable period of time, then DSL.net may provide Customer with immediate written notice of termination of the affected Service, Service Order or the Service Agreement, in DSL.net's discretion, without liability to either party.

The date and approximate time for circuit delivery shall be conveyed by DSL.net to Customer prior to installation. Other on-site work will be scheduled over time blocks offered by DSL.net. Customer shall allow DSL.net reasonable access and right-of-way to the Premises, as reasonably determined by DSL.net to be appropriate to the provision and maintenance of Services, and hereby grants to DSL.net and its contractors a revocable license to enter onto the Premises for said purposes. Customer represents and warrants that Customer has the right to grant access to the Premises. Customer shall be responsible for clearing its Premises of hazardous materials prior to DSL.net's initiation of any on-site work and providing a safe environment for DSL.net to perform service. Customer will reasonably cooperate with DSL.net's on-site work for Customer. Customer is responsible for securing any licenses, permits, easements, rights-of-way or other third party consents necessary for on-site work. If Customer fails to do so and DSL.net is required to remove wiring or Equipment, Customer shall bear the costs of disconnection and removal. If Customer (i) cancels a scheduled on-site service call on less than 48 hours notice or (ii) does not provide access at the scheduled time, then DSL.net may charge Customer a \$100 "no access" fee. DSL.net shall use commercially reasonable efforts to install the Equipment and wiring and provide the Services as promptly as practicable, but DSL.net shall not be liable for any delays in commencement of Service. DSL.net shall not be responsible for removing any wiring upon termination of any given Service. DSL.net is not liable for any defacement of, or damage to, the Premises resulting from the furnishing of Service or the attachment of equipment and facilities furnished by DSL.net at such Premises or by the installation or removal thereof, when such defacement or damage is not the result of gross negligence or willful misconduct of DSL.net. In order that DSL.net may remain at the forefront of technology service offerings, DSL.net reserves the right, at any time and from time to time, to substitute any Customer's Service technology with another level of technology that provides equal or better service to Customer.

**7. Service Cancellation.**

(A) Cancellation of Service Order by Customer Prior to Initiation of Service. Customer may cancel a Service Order prior to the Effective Service Commencement Date; provided, however, that Customer shall be responsible for the return of any Equipment furnished by DSL.net under the Service Agreement and for a cancellation charge equal to all direct costs, if any, incurred by DSL.net from the incumbent local exchange carrier responsible for circuit order and delivery during the period between the date of the Service Order and receipt of written notice

of cancellation. Customer requesting cancellation pursuant to this Section must submit written notice to the DSL.net Customer Service Department at DSL.net's principal business address or e-mail address for customer support listed on its Web site. 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.

(B) Termination of Service by Customer After Initiation of Service. Subject to Section 7(C), Customer may terminate Service on or after the Effective Service Commencement Date upon thirty (30) days' written notice to DSL.net. Customer shall remain liable for all outstanding recurring charges and non-recurring charges due and owing under the Service Agreement as of and through the effective termination date.

(C) Customer's Service Termination Liability. In the event that Customer discontinues NETgain One Service for any reason, except as permitted by Section 7(D), Section 7(E) or Section 12 of these Terms and Conditions, on or after the Effective Service Commencement Date and prior to the end of the Initial Term, or in the event that DSL.net terminates NETgain One Service for reasons attributable to Customer under Section 7(F) below, Customer shall pay termination fees equal to the sum of (a) all outstanding recurring charges and non-recurring charges due and owing under the Service Agreement as of and through the effective termination date, plus (b) all remaining recurring charges that would have been assessable and due through the end of the Initial Term for the cancelled NETgain One Service. This Section 7(C) sets forth reasonable liquidated damages from early termination of Service by Customer, in which case DSL.net's losses would be difficult or impossible to ascertain. Such liquidated damages are not a penalty. If NETgain One Service is terminated pursuant to this Section 7(C) prior to expiration of the Initial Term, DSL.net shall have the option to re-purchase the Equipment furnished by DSL.net to Customer hereunder at its current value, which shall be calculated as the full purchase price paid by Customer, depreciated on a straight-line basis over a two-year term. The foregoing option shall be exercisable upon written notice by DSL.net delivered to Customer within sixty (60) days of Service termination. 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 the 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 check to Customer or credit Customer's account, at DSL.net's election, for the refund amount owing to Customer under this Section 7(C) 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.

(D) Termination of Service by Customer for Material Service Failure. Upon written notice to DSL.net, Customer may terminate NETgain One Service in the event that DSL.net fails to meet all the objectives stated in the NETgain One 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 of the Service Agreement, provided such termination notice is delivered within 30 days of the latest Service failure giving rise to such right. In the event of such a termination, or a termination by Customer of Service permitted under Section 12 of these Terms and Conditions, Customer shall not be liable for the early termination charges described in Section 7(C), but shall remain liable for payment of all outstanding recurring charges and non-recurring charges due and owing under the Service Agreement as of and through the effective termination date. If Customer terminates NETgain One Service in accordance with this Section 7(D) prior to expiration of the Initial Term, DSL.net shall have the option to re-purchase the Equipment furnished by DSL.net to Customer hereunder at its current value, which shall be calculated as the full purchase price paid by Customer, depreciated on a straight-line basis over a two-year term. The foregoing option shall be exercisable upon written notice by DSL.net delivered to Customer within sixty (60) days of Service termination. 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 the 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 check to Customer or credit Customer's account, at DSL.net's election, for the refund owing to Customer under this Section 7(D) 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.

(E) Termination of Service by Customer for Policy Changes. In the event DSL.net makes any material changes to its NETgain One Service Level Agreement or Acceptable Use Policy from the versions posted as of the date hereof on DSL.net's Web site 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. In the event of such a termination, Customer shall not be liable for the early termination charges described in Section 7(C), but shall remain liable for the payment of all outstanding recurring charges and non-recurring charges due and owing under the Service Agreement as of and through the effective termination date. If Customer terminates NETgain One Service in accordance with this Section 7(E) prior to expiration of the Initial Term, DSL.net shall have the option to re-purchase the Equipment furnished by DSL.net to Customer hereunder at its current value, which shall be calculated as the full purchase price paid by Customer, depreciated on a straight-line basis over a two-year term. The foregoing option shall be exercisable upon written notice by DSL.net delivered to Customer within sixty (60) days of Service termination. 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 the 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 check to Customer or credit Customer's account, at DSL.net's election, for the refund owing to Customer under this Section 7(E) 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.

(F) Termination of Service by DSL.net. DSL.net may suspend or discontinue Service (or refuse to provide additional Service), or terminate any given Service Order or the Service Agreement, as the case may be, without liability to DSL.net, under the following circumstances:

- (i) For nonpayment: DSL.net may, upon written notice to Customer with ten (10) days to cure, suspend or terminate Service, as aforesaid, when there remains an unpaid balance for Service that is overdue.
- (ii) For returned checks: If Customer's check or draft is returned unpaid for any reason, Service shall be subject to suspension or termination, as aforesaid, if the full amount for which the returned check or draft was written is not wire transferred to an account specified by DSL.net within seventy-two (72) hours of written notice and return by DSL.net to Customer of the "bounced" check or draft.
- (iii) For any violation of law or any of the provisions governing the furnishing of Service: Service shall be subject to suspension or termination, as aforesaid, (a) for any violation by Customer or its end users (1) of any law, rule, regulation or policy of any government authority having jurisdiction over or relating to the use or provision of Service, (2) of any provision of DSL.net's then-current Acceptable Use Policy, as posted on DSL.net's Web site, or any other Service-affecting policy furnished in writing to Customer or posted on DSL.net's Web site, (b) by reason of any order or decision of a court or other government authority having jurisdiction which prohibits DSL.net from furnishing such Service due to acts or omissions attributable to Customer or its end users, (c) for any material violation of the Service Agreement (other than a payment default or other breach separately covered by this Section 7) affecting DSL.net's ability to provide Service or its network integrity, (d) for abnormal toll usage not covered adequately by a security deposit, or (e) for excessive filing of non-valid Service credit requests under the Service Level Agreement, unless the violation has been cured by Customer to DSL.net's reasonable satisfaction prior to the expiration of any prior notice period given under this paragraph (iii). With respect to this paragraph (iii), DSL.net will (A) provide Customer with three (3) business

days' prior written notice before suspending Service unless exigent circumstances (i.e., network integrity, specific violations of DSL.net's Acceptable Use Policy, or legal compulsion) do not permit or the violation does not lend itself to curative action, in DSL.net's reasonable determination (in which case notice need not be prior), and (B) provide Customer with three (3) business days' prior written notice of the violation and an opportunity to cure same, if, in its discretion, the circumstances so permit, before terminating the Service following a suspension.

- (iv) For other causes: Customer shall be subject to suspension or termination of Service, as aforesaid, in the event of suspected fraud or other unlawful use of Service by Customer or its end users, or fraud or material misrepresentation by Customer in any submission of information required in a Service Order or any other information submitted to DSL.net. With respect to this paragraph (iv), DSL.net will (a) provide Customer with three (3) business days' prior written notice before suspending Service unless exigent circumstances (i.e., network integrity, specific violations of DSL.net's Acceptable Use Policy, or legal compulsion) do not permit or the violation does not lend itself to curative action, in DSL.net's reasonable determination (in which case notice need not be prior), and (b) provide Customer with three (3) business days' prior written notice of the violation and an opportunity to cure same before terminating Service following a suspension.
- (v) For Bankruptcy: In the event of any Customer filing of bankruptcy, reorganization, or receivership, an assignment for the benefit of creditors, or failing to discharge an involuntary petition therefor within the time permitted by law, or abandonment of Service, DSL.net may immediately terminate or suspend Service.
- (vi) As a result of engineering changes: DSL.net may, upon forty-five (45) days' written notice to Customer (or such sooner time as may be permitted by law), terminate any Service due to engineering changes in the DSL.net network, a reduction in DSL.net's service area, a cessation of a given Service offering, or the lack of available facilities or equipment from DSL.net's supporting suppliers. If DSL.net terminates NETgain One Service in accordance with this Section 7(F)(vi) prior to expiration of the Initial Term, DSL.net shall have the option to re-purchase the Equipment furnished by DSL.net to Customer hereunder at its current value, which shall be calculated as the full purchase price paid by Customer, depreciated on a straight-line basis over a two-year term. The foregoing option shall be exercisable upon written notice by DSL.net delivered to Customer within sixty (60) days of Service termination. 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 the 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 check to Customer or credit Customer's account, at DSL.net's election, for the refund owing to Customer under this Section 7(F)(vi) 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.
- (vii) Cancellation of Service by DSL.net Prior to Initiation of Service. DSL.net may cancel a Service Order prior to the Effective Service Commencement Date, upon written notice to Customer, if DSL.net determines that it is unable to effect installation or provide Service without undue cost or burden, without liability to either party, and, in the event of any such cancellation, DSL.net shall refund any service activation charges prepaid by Customer for the cancelled Service. If DSL.net cancels a Service Order in accordance with this Section 7(F)(vii), 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 any Equipment which may have been furnished under the Service Order or shall ship the Equipment back to DSL.net in accordance with DSL.net's return materials authorization procedures, at DSL.net's cost. DSL.net shall refund to Customer the purchase price paid by Customer for such 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.

Upon DSL.net's termination of Service to Customer under any of the foregoing subsections (i), (ii), (iii), (iv), or (v) of this Section 7(F), DSL.net may, in addition to all other remedies that may be available to DSL.net at law or in equity or under any other provision of the Service Agreement, assess and collect from Customer a termination charge for the Services so terminated and exercise its Equipment repurchase option in accordance with Section 7(C) hereof.

(G) Resumption of Service. If Service has been discontinued hereunder, and Customer requests that Service be restored, DSL.net shall have the sole and absolute discretion to restore such Services only after satisfaction of such conditions as DSL.net determines to be required for its protection. Nonrecurring charges (such as staging, installation, etc.) may apply to restored Services.

**8. Warranty and Limitation of Liability.** DSL.net agrees to guarantee the performance of NETgain One Service to the extent of the Service Level Agreement as in effect from time to time for such Service, as posted on the DSL.net Web site. EXCEPT AS OTHERWISE EXPLICITLY SET FORTH HEREIN, ALL EQUIPMENT AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S OR AN END USER'S USE THEREOF IS ENTIRELY AT CUSTOMER'S AND THE END USER'S RISK. EXCEPT FOR THE WARRANTIES EXPLICITLY SET FORTH HEREIN, AND THE NETGAIN ONE SERVICE LEVEL AGREEMENT, 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. 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 NEGLIGENT 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 (INCLUDING EMERGENCY 9-1-1 CALLING) MAY BE TEMPORARILY UNAVAILABLE FOR SCHEDULED OR UNSCHEDULED MAINTENANCE, AND FOR OTHER REASONS WITHIN AND OUTSIDE OF THE CONTROL OF DSL.NET, 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 OR AN END USER'S USE OF SERVICE FROM ADVERSELY AFFECTING THE EFFECTIVENESS OF THE SERVICE FOR OTHER CLIENTS OF DSL.NET OR TO PRESERVE NETWORK INTEGRITY OR PREVENT NETWORK ABUSE, IN EACH CASE, WITHOUT LIABILITY TO ANY PARTY. IN NO EVENT SHALL DSL.NET'S LIABILITY FOR ANY CLAIMS HEREUNDER (INCLUDING, WITHOUT LIMITATION, DAMAGES TO PERSON OR PROPERTY SUSTAINED AS A RESULT OF DSL.NET'S GROSSLY NEGLIGENT PERFORMANCE OF INSTALLATION OR REPAIR WORK AT THE PREMISES) EXCEED THE AMOUNT OF SIX (6) MONTH'S OF CONTRACTED MONTHLY RECURRING SERVICE CHARGES UNDER THE SERVICE AGREEMENT.

The parties confirm that the Service Agreement is a commercial transaction between willing commercial contract parties. **Customer agrees that Services provided hereunder by DSL.net are not consumer transactions and are not subject to consumer protection laws, and Customer expressly represents and warrants that it is not a consumer within the meaning of those laws.**

**9. Indemnity.** Customer shall defend, indemnify and hold DSL.net, and its suppliers, affiliates, principals, officers, directors, agents and employees (each, a "Representative"), harmless from and against any claim, loss, cost, damage or expense, including, but not limited to, reasonable attorneys' fees and expenses and court costs, arising out of or resulting from: (a) the acts or omissions of Customer, its end users, and their Representatives, including, without limitation, a breach of the Service Agreement or DSL.net's Acceptable Use Policy; (b) claims of libel, slander, infringement of intellectual property rights, or any other injury to a person or property arising in whole or in part from the data, information or content transmitted by Customer, or end users accessing Customer's subscribed Services, over DSL.net's Services, and (c) any and all claims, loss, demands, suits, or other actions, or any liability whatsoever, whether suffered, made, instituted or asserted by Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the Service and not due to the gross negligence or willful misconduct of DSL.net.

**10. Confidentiality.** Customer shall not use DSL.net's name, trademarks, trade names or other proprietary identifying symbols, nor disclose any DSL.net proprietary information (including pricing agreed to under the Service Agreement), without the prior written approval of DSL.net. Except as permitted by law or the express terms of the Service Agreement, DSL.net shall not use or publicly disclose any Customer information other than for the limited purpose of delivering or facilitating the provision of Service to Customer. 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.

**11. Customer Responsibility.** Customer is responsible for protecting all account passwords, for any authorized or unauthorized use made of Customer's subscribed Services, and for its end users' misuse of the Services and violation of the Service Agreement. 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 Service Agreement and DSL.net's Acceptable Use Policy as in effect from time-to-time, as posted on DSL.net's Web site. Any failure to do so shall be deemed a breach of the Service Agreement. Customer acknowledges that posting a changed Acceptable Use Policy or Service Level Agreement on DSL.net's Web site will be sufficient notice to Customer of changes thereto. Customer acknowledges that it is responsible for complying with the eligibility requirements established by DSL.net in order to receive any rebate or credit which may be offered by DSL.net or for which Customer may become eligible, from time to time. Unless Customer advises DSL.net otherwise in writing, Customer grants DSL.net permission to send Customer periodic notices on DSL.net products and services, promotional and special offers and/or industry news. Customer shall not allow any facility or equipment of DSL.net to be rearranged, removed, disconnected, or repaired without DSL.net's prior written consent, nor will Customer permit any liens or encumbrances to be placed on any DSL.net equipment or facility. Customer is responsible for any damage, including without limitation personal injury or damage to DSL.net facilities and equipment, caused by Customer-provided equipment. DSL.net's services may not be connected to the services of other communications providers without DSL.net's express written permission.

**12. Force Majeure.** DSL.net shall not be liable for any delay or failure of performance of any part of the Service Agreement to the extent that such failure or delay is caused by Customer or an event of "force majeure," including but not limited to, fire, flood, explosion, war, strike, embargo, governmental regulations, acts of civil or military authority, acts of God, acts of terrorism, acts or omissions of vendors and suppliers, or other causes beyond DSL.net's reasonable control. For the duration of

the excused performance, the duties of DSL.net shall be abated and shall resume without liability thereafter. In the event of the occurrence of a force majeure event which causes a material interruption in Service and continues unremedied by DSL.net for 30 days, Customer may terminate the Service Agreement or 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, subject to Section 7(D) of these Terms and Conditions.

**13. Governing Law.** The Service Agreement shall be governed by the laws of the State of Connecticut (without regard to its principles of conflicts of laws) and applicable federal laws. Actions to enforce the Service 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 Service Agreement.

**14. Notices.** 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 at the latest address provided by the receiving party to the sending party in writing. Notwithstanding the foregoing, (i) notices and claims sent by Customer under the Service Level Agreement shall be sent in the manner set forth in such agreement, and (ii) customer service and billing issues shall be sent via e-mail to the respective URL addresses listed on DSL.net's Web site, from time to time, for those purposes (currently, [support@dsl.net](mailto:support@dsl.net) and [billinghelp@dsl.net](mailto:billinghelp@dsl.net)).

**15. Miscellaneous.** The Service Agreement supersedes any and all prior agreements or understandings, oral or written, with respect to the Services and comprises the full and final agreement of the parties with respect to the provision of Services. The Service Agreement may be modified only by written instrument, executed by both parties' authorized representatives, or, to the limited extent expressly authorized hereunder, by posting of revised terms on DSL.net's Web site. 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 additional e-mail boxes), the Services, as revised, shall remain subject to the applicable terms of the Service 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). The Service Agreement may be executed in counterparts, and transmitted via facsimile transmission, with all such counterparts constituting one and the same instrument. 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 Service Agreement or to the Service Agreement as being valid and binding upon Customer. Nothing in the Service Agreement shall be construed as creating an employer-employee or agency relationship, a partnership, or a joint venture between the parties.

DSL.net's performance hereunder may become subject, in whole or in part, to applicable governmental regulations or tariffs filed by DSL.net with governing regulatory authorities in respect of the Services. In the event of a conflict between the terms of any governing tariff or regulation and the Service Agreement, the governing tariff or regulation shall control to the limited extent of such conflict.

Customer may not transfer, assign or delegate any right or obligation with respect to the Services, and any attempted transfer, assignment or delegation shall be void and of no effect unless DSL.net has given express prior written consent. DSL.net's rights and obligations under the Service Agreement may be assigned or delegated without restriction. The Service Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

The failure by either party to take action to enforce compliance with any of the terms or conditions of the Service Agreement, or to give notice of any breach, shall not constitute a waiver or relinquishment of such right. Waivers shall only be valid if in writing, and 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. Without limiting the foregoing, 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. No provision of the Service Agreement is intended, nor shall any be interpreted, to provide

any person not a party to the Service Agreement with any remedy, claim, liability, reimbursement, or cause of action or create any other third party beneficiary rights. Each provision of the Service Agreement is severable from the whole, and if any one provision is declared invalid or unenforceable, the other provisions shall remain in full force and effect. Termination of the Service Agreement shall not terminate or render void any provisions, which, by their logical context, would reasonably be expected to survive termination of the Service Agreement (including, without limitation, Sections 3, 7, 8, 9, 10, 13 and 15 of these Terms and Conditions). Services may be delivered to Customer or supported in whole or in part by DSL.net or DSL.net's affiliates, and/or their respective authorized contractors and third-party suppliers. References herein to "days" shall mean calendar days, unless referred to as a business day. References herein to a "business day" shall mean a weekday other than a Federal holiday.