

EarthLink Business Service Agreement for EarthLink's SOHO DSL, SMALL OFFICE DSL, SMALL OFFICE DSL PLUS, BUSINESS DSL, BUSINESS DSL PLUS AND T1 SERVICE

READ THIS SERVICE AGREEMENT CAREFULLY BEFORE INSTALLING OR USING EARTHLINK'S SOHO DSL, SMALL OFFICE DSL, SMALL OFFICE DSL PLUS, BUSINESS DSL, BUSINESS DSL PLUS OR T1 SERVICE.

1. AGREEMENT

This Service Agreement ("Agreement") is between EarthLink, Inc. ("EarthLink") and you for EarthLink's SOHO DSL, Small Office DSL, Small Office DSL Plus, Business DSL, Business DSL Plus or T1 service ("Service"). The terms and conditions in this Agreement apply to all of the above-mentioned the Service except the terms of Section 17 only apply to the T1 Service.

This Agreement consists of the terms and conditions below, the specific terms of your billing plan for the Service, the [Privacy Policy](http://www.earthlinkbusiness.com/about-us/legal/privacy-policy.xea), located at www.earthlinkbusiness.com/about-us/legal/privacy-policy.xea, and the [Acceptable Use Policy](http://www.earthlinkbusiness.com/about-us/legal/acceptable-use-policy.xea), located at www.earthlinkbusiness.com/about-us/legal/acceptable-use-policy.xea, which are incorporated herein.

By establishing an account with EarthLink, using the Service, using EarthLink-provided software, using the EarthLink-provided equipment ("EarthLink-provided Equipment") or indicating agreement through subscribing to the Service on the EarthLink website, you agree to be bound by this Agreement and to use the Service in compliance with the terms of this Agreement.

2. TERM

The term of this Agreement begins on your account billing start date and continues for the initial term commitment period of twelve months unless otherwise indicated in your billing plan. Unless the Service is cancelled pursuant to Section 6 herein, the term will continue month-to-month after the expiration of the initial term unless your billing plan allows you to sign up for another twelve month term and in such case, the term will continue month-to-month after the expiration of the second twelve month term.

EarthLink reserves the right to change prices of your billing plan upon 30 days written notice prior to the effective date of such new pricing. EarthLink reserves the right to change any of the features, content or applications of the Service at any time with or without notice to you. Current prices and features of the Service may be obtained by visiting the EarthLink website www.earthlink.net or by calling (866) 464-6811.

EarthLink may terminate this Agreement, your password, your account, or your use of the Service for any reason, including, without limitation, if EarthLink, in its sole discretion, believes you have violated this Agreement or if you fail to pay any charges when due. Termination notice will be sent to you via email or U.S. Mail to the address you provided when subscribing to the Service. This Agreement terminates upon the termination of the Service. Sections 4, 5, 10, 11, 13, 14 and 16 of this Agreement will survive termination of this Agreement.

3. THE SERVICE

Depending on the type of Service that you choose, the Service may include internet access, software, EarthLink-provided Equipment, email accounts, web space and other features. From time to time EarthLink may impose reasonable rules and regulations regarding the use of the Service.

The Service speed may vary depending on location, line quality, inside wiring, Internet traffic, and other factors beyond the control of EarthLink. EarthLink does not guarantee upload or download speeds. Some line stabilization may be necessary for providing the Service. Stabilization could include the lowering of provisioned line speed. Should this occur, EarthLink will NOT be able to increase the line speed once the connection is stabilized. Some Services may only work using certain telephone carriers or non-PBX (including rollover/party line) phone systems. Some Services may require the use of specific hardware and/or software and may be limited by specific geographic location. The billing plans for some Services may vary by geographic location and phone carrier provider. In the event that you change to a different EarthLink service, consult with an EarthLink representative regarding how such change will affect your billing plan.

When using the Service, you are solely responsible for determining if use of a particular dial-up number will cause you to incur long-distance, toll, or any other charges, including simultaneous login charges. EarthLink does not guarantee that any dial-up access numbers EarthLink provides will be a local call from your location. EarthLink is not responsible for any long-distance, toll, or other charges you incur. Toll-free (800, 888, 877), international, and simultaneous login access costs will be extra. Current prices are listed on the EarthLink homepage at www.earthlink.net. EarthLink may change its POP numbers at any time. EarthLink reserves the right to direct you to use certain numbers to access the Service or to restrict use of specific access numbers.

Username, passwords, email addresses and IP addresses are EarthLink's property and EarthLink may alter or replace them at any time. If your inbox is approaching the storage limit for the Service, it also will be noted visually on your web mail and EarthLink also will send you email notices to your EarthLink email address notifying you that you are approaching your email storage limit. Email accounts exceeding allotted email space may, depending on the Service and at EarthLink's discretion, be suspended and be transferred to a compressed temporary file or storage or may be deleted.

You represent that when you transmit, upload, post or submit any content, images or data using the Service you have the legal right to do so and that your use of such data or content does not violate the copyright or trademark laws or any other third party rights. You agree that EarthLink has no responsibility for the accuracy, completeness, value or usefulness of any content, advice or opinions contained in any emails, message boards, chat rooms, social networks or online services.

If your billing plan includes, in addition to the broadband service, a dial-up connection to the Internet from only one computer at a time, then if two or more dial-up modems are logged into this account to access the Internet at the same time ("Simultaneous Usage"), Simultaneous Usage charges will be accrued for that month. The Simultaneous Usage fee is \$1.00 per hour, pro-rated to the minute, through the end of the monthly billing cycle. The Simultaneous Usage fee will be added to your monthly bill. Although some EarthLink access plans come with multiple email addresses, the use of two or more dial-up connections from one EarthLink account at the same time to access multiple email addresses associated with that account will accrue Simultaneous Usage charges. Your primary connection via DSL does not count directly toward the Simultaneous Usage calculations.

4. ACCOUNT REQUIREMENTS

In order to subscribe to and receive the Service, you acknowledge that you are 18 years of age or older, and you have legal authority to enter into this Agreement. You must provide EarthLink with a valid credit card, debit card or other EarthLink approved payment methods for the Service. The Service must be available in your location. Your computer may have to meet certain minimum requirements, which may be found on the EarthLink homepage at: www.earthlink.net.

5. BILLING AND PAYMENT

You will be charged a monthly fee for the Service. All payments will be made in US dollars. EarthLink may charge you for taxes and other applicable fees. EarthLink may offer from time to time certain promotions with different terms, activation fees, and monthly charges. The Service may also include charges for hardware, activation, early cancellation, billing fees, or postage and handling. You must provide accurate billing information including legal name, address, telephone number, and credit card or debit card billing information, and report all changes to such information promptly to EarthLink.

You agree to pay all taxes, surcharges, and fees set by the government. EarthLink may not always give advance notice of changes to these items. You are responsible for any charges to your account. Questions regarding charges to an account should be directed to the EarthLink Customer Service Department at (888-698-4357) or via online chat at support.earthlink.net. All charges are considered valid unless disputed in writing within 30 days of the billing date and mailed to:

EarthLink, Inc.
Customer Service
1375 Peachtree Street
Level A
Atlanta, Georgia 30309

Adjustments will not be made for charges that are disputed more than 30 days after the billing date.

Charges may be billed on or after your billing cycle date to your method of payment on file each month for the Service and any additional usage, services, taxes and fees. EarthLink is not responsible for any charges or expenses (e.g., for overdrawn accounts, exceeding credit card limits, etc.) resulting from charges billed by EarthLink. If EarthLink uses a collection agency or uses legal action to recover monies due, you agree to pay all fees arising from or relating to the recovery of such monies, including attorneys' fees.

EarthLink reserves the right to validate the payment method information you provide at registration and account updates including attempting up to a \$1.00 authorization to your credit card or debit card which is not actually billed. If you provided EarthLink with a valid credit card or debit card, you agree to maintain valid and current credit card or debit card information on file with EarthLink at all times. You acknowledge and agree that you authorize EarthLink and that EarthLink does not need to obtain any additional authorization from you for any recurring payments, automatic billing options or updated credit card or debit card information provided by your credit card company or debit card company to EarthLink. If payment by check has been accepted by EarthLink, then payments by check must be received by EarthLink by the due date listed in your monthly invoice. When you pay your fees by check, you authorize EarthLink to electronically process your payment. If your check is processed electronically, your checking account may be debited on the same day as EarthLink receives your check and neither your check nor a copy of your check will be included with your checking account statement. EarthLink will charge you a fee for returned checks or returned bank drafts from your financial institution.

Your account will be automatically inactivated if you put a stop payment on your account with your financial institution in connection with payment of your monthly bill. Delinquent accounts may be suspended or canceled at EarthLink's sole discretion. If you pay your monthly Service fee to a third party provider, your account also may be suspended for non-payment if your account is delinquent. The monthly Service fee does not include monthly telephone service. In the event that you change to a different EarthLink service or change the speed of your existing Service, consult with an EarthLink representative regarding whether such change will affect your billing plan.

6. CANCELLATION

To cancel the Service, you must do one of the following:

Telephone Cancellation: (888) EARTHLINK (888-327-8454)

Fax Cancellation: Please include your account number and a current phone number and fax to EarthLink Access Customer Service at (678) 623-5076

Mail Cancellation: Send registered or certified mail, return receipt requested to:

EarthLink, Inc.
Cancel (list type of Service)
1375 Peachtree Street
Level A
Atlanta, GA 30309

To process your written cancellation request, EarthLink requires that you provide the following: (i) Written request submitted on company letterhead signed by an authorized representative, (ii) Your user or account number, (iii) Current telephone number, and (iv) Reason for canceling the Service. To process your telephone cancellation request, EarthLink requires that you (i) Verify the security word listed in your account, (ii) Your user or account number, (iii) Current telephone number, and (iv) Reason for canceling the Service.

Cancellation will be effective at the end of your billing cycle after the notice of cancellation is received and processed. Upon cancellation, email service will be terminated and all files stored on EarthLink servers will be deleted.

If you purchased EarthLink-provided Equipment and you cancel the Service prior to the end of the commitment term, then you will be charged an early termination fee as set forth in your billing plan. If you placed an order for EarthLink-provided Equipment and prior to installation you cancel after 72 hours of placing such order, then you also will be charged an early termination fee.

EarthLink may suspend or terminate the Service and this Agreement without prior notice if you fail to timely pay in full for the Service or if you violate the EarthLink Acceptable Use Policy. You may reinstate the suspended Service due to nonpayment if, within five (5) calendar days of the Service's suspension date, you pay to EarthLink the reinstatement fee plus all outstanding amounts due, including the cost of the Service that would have been provided during the suspension period. If you choose not to reinstate the Service by the aforementioned deadline, EarthLink will deactivate the Service without further notice and any applicable invoiced charges, including any applicable early termination fee, will become immediately due and payable.

Cancellation fees will not apply if EarthLink is unable to provision ordered Service or you terminate the Service due to an uncured, material breach by EarthLink.

If EarthLink can provide the Service at the new location or on the new line, you must pay the activation fee since this requires a new installation. EarthLink will credit the early termination fee to your account after installation is completed at the new location provided you reactivate the Service and begin a new 12 month commitment term within 60 days from the time you terminated the Service at your old location regardless of the length of the term completed on the first line. EarthLink may terminate this Agreement, your password, your account, or your use of the Service for any reason, including, without limitation, if EarthLink, in its sole discretion, believes you have violated the Agreements or if you fail to pay any charges when due. Termination notice will be by email or U.S. Mail to the address you provided for the Service. All notices to you will be deemed effective on the first (1st) day following the date of the email or on the fourth (4th) day following the date of the mailing.

If you decide to reactivate your canceled account, EarthLink will bill you a reactivation fee.

7. YOUR ACCOUNT, PASSWORD, AND SECURITY

Upon registration, you will receive a username, password, and account designation. You are solely responsible for use of the Service. You must keep your password confidential so that no one else may access the Service through your account. You must notify EarthLink immediately upon discovering any unauthorized use of your account. In addition, you are solely responsible for maintaining the security of your computer(s) and data including the encryption of data and the protection of you username and password. You are solely responsible for the management of your information on your computer including back up and restoration of your data. EarthLink recommends that you use anti-virus, anti-spy and firewall software including appropriate updating of such software.

EarthLink reserves the right to timeout inactive connections. EarthLink technical support may be limited to EarthLink-provided services, software and/or unmodified hardware. Email accounts exceeding 10MB in size may be inactivated until you reduce the size of the mail being stored. Any free website exceeding the allotted amount of disk space may be suspended until you reduce the disk space usage or purchase additional space. Any free website exceeding the allotted amount of bandwidth will be billed for excess traffic. Email, webspace, and bandwidth limits are posted on the EarthLink website at www.earthlink.net. These limits may also be obtained by calling 1-888-758-2963. EarthLink reserves the right to change limits at any time upon 30 days prior notice.

8. INSTALLATION

The Service includes a new user kit and EarthLink-provided Equipment. If the relationship is terminated by either EarthLink or you before the activation date of the Service or if the line is found to be unprovisionable, you must return the full kit with all of its original packaging to the name of the vendor and its return address on the kit. Contents of the kit may change from time to time.

The installation, use, inspection, maintenance, repair, and removal of the EarthLink-provided Equipment may result in service outage or potential damage to your computer. You are solely responsible for backing up all of your existing computer files and data. EarthLink and its employees, officers, directors, agents, contractors, and representatives will have no liability whatsoever for any damage to or loss or destruction of any of your hardware, software, files, data, or peripherals. You assume responsibility for impacts to or loss of any warranty associated with the opening of your computer for installation of an internal card (such as a Network Interface Card) or DSL modem.

You acknowledge that this is a fixed-location Service. Moving to another location will require the Service to be reprovisioned at the new location. This may result in substantial interruption of the Service and will result in fees associated with cancellation and setting up a new account. Early termination charges will apply even if the cancellation is for reasons of a move to another location.

If you are unable to perform self-installation, you have the option to purchase professional installation from EarthLink. You will be responsible for all fees associated with the EarthLink professional installation. You are also responsible for all inside wiring repair necessary to install the Service.

EARTHLINK DOES NOT REPRESENT, WARRANT, OR COVENANT THAT INSTALLATION BY YOU OR A THIRD PARTY CHOSEN BY YOU WILL ENABLE YOU TO SUCCESSFULLY ACCESS, OPERATE, OR USE THE SERVICE, NOR THAT SUCH INSTALLATION WILL NOT CAUSE DAMAGE TO YOUR COMPUTER, DATA, SOFTWARE, FILES, OR PERIPHERALS. IN ADDITION, EARTHLINK WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, OR FOR THE FAILURE TO PROPERLY INSTALL, ACCESS, USE, OR OPERATE THE EARTHLINK-PROVIDED EQUIPMENT OR SERVICE BECAUSE OF YOUR INSTALLATION. THE FOREGOING LIMITATION OF LIABILITY IS IN ADDITION TO AND WILL IN NO WAY BE CONSTRUED TO LIMIT ANY AND ALL LIMITATIONS OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT.

Because of the complex nature of broadband services, availability, and the underlying infrastructure, it may not be possible to provide the Service to everyone. In its sole discretion, EarthLink may cancel the installation process and refund any money that you have paid. EarthLink will notify you of its intent to cancel as soon as reasonably possible. It may take 30 or more days to determine if EarthLink is able to provide the Service. EarthLink will have no responsibility whatsoever for claims arising out of its failure or refusal to complete the installation or provide the Service.

9. MONITORING THE SERVICE

EarthLink has no obligation to monitor the Service, but may do so if EarthLink, in its sole discretion, believes that to do so would be needed to: comply with laws, regulations, or governmental or legal requests; operate the technical aspects of the Service in a proper, effective, and reasonable manner; or protect itself, its employees, its customers or others as described in the EarthLink Privacy Policy. EarthLink would only disclose information to third parties regarding your use of the Service in a manner that is consistent with the EarthLink Privacy Policy. EarthLink may immediately remove your material or information from EarthLink's servers, in whole or in part, which EarthLink reasonably believes to infringe on another's property rights or to violate the EarthLink Acceptable Use Policy or other policies, laws or regulations.

10. DISCLAIMERS

CERTAIN EARTHLINK-PROVIDED EQUIPMENT MAY BE SUBJECT TO THIRD PARTY WARRANTIES, WHICH MAY BE PASSED THROUGH EARTHLINK TO YOU AT NO ADDITIONAL CHARGE. EARTHLINK WILL COMPLY WITH ALL REASONABLE REQUIREMENTS NECESSARY TO AFFECT THE PASS-THROUGH OF THE WARRANTY TO YOU. AT ITS SOLE OPTION WITHIN THE INITIAL TERM, EARTHLINK, ITS SUPPLIERS OR ITS AGENTS MAY REPLACE A DEFECTIVE MODEM OR ROUTER ON BEHALF OF THE MANUFACTURER, PROVIDED YOU FOLLOW ALL APPLICABLE PROCEDURES AND OBTAIN A RETURN MATERIALS AUTHORIZATION (RMA) NUMBER. THIS WARRANTY DOES NOT COVER DEFECTS RESULTING FROM ACTS OUTSIDE OF EARTHLINK'S CONTROL, USE CONTRARY TO SPECIFICATIONS OR INSTRUCTIONS, OR REPAIR OR MODIFICATION BY ANYONE OTHER THAN EARTHLINK, ITS SUPPLIERS OR ITS AGENTS. EARTHLINK RESERVES THE RIGHT TO MODIFY THIS WARRANTY AT ANY TIME. EARTHLINK WILL NOT BE RESPONSIBLE FOR ANY EARTHLINK-PROVIDED EQUIPMENT OR OTHER EQUIPMENT DAMAGED BY ANY NATURALLY OCCURRING EVENT SUCH AS LIGHTNING, FLOOD, OR EARTHQUAKE OR OTHER EVENTS OUT OF EARTHLINK'S CONTROL SUCH AS FIRE, POWER SURGES, OR THE ACTS OF OTHERS.

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EARTHLINK AND ITS SUPPLIERS DO NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES, OR OTHER HARMFUL COMPONENTS. EARTHLINK AND ITS SUPPLIERS MAKE NO EXPRESS WARRANTIES AND WAIVE ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY MERCHANDISE, INFORMATION OR SERVICE PROVIDED THROUGH EARTHLINK OR THE INTERNET GENERALLY. NO ADVICE OR INFORMATION GIVEN BY EARTHLINK OR ITS REPRESENTATIVES WILL CREATE A WARRANTY.

EARTHLINK, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUBSIDIARIES, AFFILIATES, AGENTS, SUPPLIERS AND CONTRACTORS (COLLECTIVELY, "EARTHLINK PARTIES") WILL HAVE NO LIABILITY FOR ANY COSTS OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM YOUR USE OF THE SERVICE OR THE INTERNET

INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY, MULTIPLE, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. IN ANY EVENT, ANY EARTHLINK PARTY'S CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE SERVICE WILL NOT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID TO EARTHLINK DURING THE THREE MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

THE EARTHLINK PARTIES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM: OTHER USERS ACCESSING YOUR COMPUTER; SECURITY BREACHES; EAVESDROPPING; DENIAL OF SERVICE ATTACKS; INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICE; YOUR RELIANCE ON OR USE OF THE EARTHLINK-PROVIDED EQUIPMENT OR THE SERVICE, OR THE MISTAKES, OMISSION, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSIONS, OR ANY FAILURE OF PERFORMANCE OF THE EARTHLINK-PROVIDED EQUIPMENT OR THE SERVICE; THE USE OF THE EARTHLINK-PROVIDED EQUIPMENT OR THE SERVICE BY YOU OR A THIRD PARTY THAT INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INDUSTRIAL OR INTELLECTUAL PROPERTY RIGHTS, PROPRIETARY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY; THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ALL SERVICES, PRODUCTS, AND OTHER INFORMATION; AND THE QUALITY AND MERCHANTABILITY OF ALL MERCHANDISE PROVIDED THROUGH THE USE OF THE SERVICE OR THE INTERNET.

THE FOREGOING LIMITATION APPLIES TO THE ACTS, OMISSIONS, NEGLIGENCE AND GROSS NEGLIGENCE OF EARTHLINK PARTIES WHICH, BUT FOR THIS PROVISION, WOULD GIVE RISE TO THE CAUSE OF ACTION IN CONTRACT, TORT, OR ANY OTHER LEGAL DOCTRINE. YOUR ONLY AND EXCLUSIVE REMEDIES UNDER THIS AGREEMENT ARE AS EXPRESSLY SET FORTH IN THIS AGREEMENT. ANY WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

11. INDEMNIFICATION

You agree to defend, indemnify and hold the EarthLink Parties harmless from and against all third party claims, demands, suits, actions, judgments, losses, costs, damages (direct, indirect and consequential), attorney's fees and expenses that an EarthLink Party may sustain or incur by reason of your use of the Service or the use of the Service by anyone else in your household (i) in violation of applicable laws, regulations or the terms of this Agreement, (ii) to transmit any messages, content, images or other information via the Internet, (iii) in connection with any claims for infringement of any intellectual property rights arising from or in connection with use of the Service, or (iv) in any manner that harms any person resulting in the personal injury or death of any person or in damage to or loss of any tangible or intangible (including data) property.

12. TECHNICAL SUPPORT POLICY

Due to the wide range of hardware and software configurations and compatibility, it may not be possible for EarthLink to provide technical support for your current set of products. In certain circumstances, it may be necessary to refer you to the manufacturer of your hardware or software vendor for technical support of their products.

13. GOVERNING LAW

This Agreement is governed by Georgia law without regard to conflict of law provisions.

14. DISPUTE RESOLUTION BY BINDING ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by arbitration, and administered by the American Arbitration Association under its Commercial Arbitration Rules. Any such arbitration will be governed by Georgia law. The arbitrator will be an expert in the field of Internet services and will be bound by the terms of this Agreement.

The arbitrator's award will be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any customer seeking arbitration pursuant to this Agreement will pursue such

arbitration on an individual basis and not as a plaintiff or class member in any purported class or representative proceeding. There will be no class action arbitration pursuant to this Agreement.

California residents are entitled to the following information:

The Service is provided by EarthLink, Inc., 1375 Peachtree Street, Atlanta, Georgia 30309. Phone: (888) 698-4357.

Charges vary depending on the type of Service. Current pricing may be obtained from the EarthLink website: www.earthlink.net. EarthLink reserves the right to change prices and institute new fees at any time upon 30 days prior notice.

Complaints and questions about the Service should be directed to EarthLink Customer Service at (888) 698-4357. The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1020 N. Street, #501, Sacramento, CA 95814 or by telephone at (916) 445-1254.

Actions arising from this Agreement may be brought in an appropriate California small claims court.

15. REVISIONS TO THE AGREEMENT

EarthLink may revise, amend, or modify this Agreement from time to time. Notice of any revision, amendment, or modification will be posted on EarthLink's Web site at www.earthlink.biz and/or on your start pages and/or by email and/or in mailings to your primary EarthLink email account and will be effective on the date noted in the posting. This Agreement may not be amended or modified by you except by means of a written document signed by both you and an authorized representative of EarthLink. By continuing to use the Service after the amendments are effective, you accept and agree to abide by them.

16. MISCELLANEOUS

You may not assign your rights or delegate any of your duties under this Agreement without the prior written consent of EarthLink, and any attempted assignment or delegation without such consent will be void. If one or more provisions of this Agreement will be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired thereby. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause in Section 14; if that prohibition is found to be unenforceable, the arbitration clause (but only the arbitration clause) will be null and void. EarthLink will amend or replace such provision with one that is valid and enforceable and which achieves, to the extent possible, the original objectives and intent of EarthLink as reflected in the original provision. Nothing in this Agreement or in the understanding of the parties construes upon the parties the status of agency, partnership, or other form of joint enterprise between the parties. EarthLink may subcontract any work, obligations or other performance required of EarthLink under this Agreement without your consent. EarthLink will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a government in its sovereign capacity, acts of war, terrorism, acts of a public enemy, fires, earthquakes, acts of God, labor disputes, strikes, work slow-downs or other labor-related activity ("Force Majeure").

17. T1 Terms¹

The EarthLink T1 circuit will be successfully provisioned if the maximum throughput is 80% of the ordered service. If the Field Service Technician is unable to successfully provide a circuit with the ordered service, you will be offered the maximum available throughput rate and corresponding service.

EarthLink's target installation interval period for the T1 Service is 30 calendar days from the day you placed the order until the day the EarthLink field service technician ("Field Service Technician") is dispatched to install the line. This calculation of the target installation interval period does not include (i) any period that EarthLink waits for a response or action from you, (ii) any period that EarthLink waits to install the line due to your failure to respond, lack of access to your facilities or change of requested installation date, or (iii) any period resulting from a Force Majeure event. If this Installation Interval target is not met, EarthLink will provide the first month of the T1 Service at no charge.

The service levels for the T1 Service include the following:

Network Availability

EarthLink's target for Network Availability is 99.99%. Network Availability is defined as the percentage of minutes in a calendar month a customer circuit did not experience a service outage in that month. The availability target does not account for scheduled outages on EarthLink's network or events outside of EarthLink's control, including, but not limited to, Force Majeure events or your equipment outages. Network downtime is calculated commencing with the date and time on which you contact EarthLink and a trouble ticket is opened, and ending upon confirmation from EarthLink that the network is restored. If EarthLink does not meet the Network Availability target for a particular month, EarthLink will provide a credit to you based on the amount of downtime experienced. Each hour of downtime constitutes an hour of credit. Downtime in excess of 5 hours in one day will be considered an entire day. Credit is calculated based on the monthly recurring fee and a 30 day month.

Mean Response Time

In the event that a trouble ticket is required, the Mean Time To Repair ("MTTR") is targeted at 4 hours. EarthLink will provide updates to you at least once daily on each open issue. Each issue will be handled separately and will not be combined with another open issue unless related to the open issue.

Severe and Chronic Problems

You are experiencing a "Severe Problem" if the aggregate Service Outage time experienced is in excess of 24 hours in any calendar month. If a subsequent Severe Problem occurs within one calendar month following the calendar month in which you experienced a Severe Problem, it will be considered a "Chronic Problem". Upon verification of a Chronic Problem, you may request that EarthLink disconnect the circuit and any applicable early termination fees will be waived.

You are responsible for identifying and requesting all valid service level claims and corresponding credits. To be eligible for service credits, you must first report outage, delay or delivery events to EarthLink's Technical Support call centers and a trouble ticket must be opened. Please request a ticket number from the EarthLink representative. EarthLink will notify you of its resolution of the reported outage. You must claim any applicable service credits by calling EarthLink Access Customer Service at 1-888-698-4357 within 15 calendar days of the notice of resolution of the reported incident. In the event that two or more credits are simultaneously claimed, a credit will be applied toward the single claim resulting in the largest credit. EarthLink will apply any service credits to your next monthly invoice.

If you purchased Customer Premise Equipment directly from EarthLink, EarthLink will assign, to the extent permitted, the manufacturer's warranty of at least one (1) year. In the event that the equipment is determined to be faulty within the applicable warranty period, EarthLink will dispatch a Field Service Technician to your premises to configure and install the replacement equipment within 5 business days of EarthLink's determination that such premise equipment requires replacement.

If the Field Service Technician is dispatched to support a warranty replacement and it is determined that the equipment is not faulty and the problem does not fall under the manufacturer's warranty, then you will be charged any applicable service order charges for the Field Service Technician's dispatch. This warranty does not apply to the equipment or service problems caused by your equipment configuration changes done after the initial installation of your premise equipment. After one year, repair and replacement of your premise equipment becomes your responsibility.

Version: 04-16-2012

The following endnotes summarize the revisions made in this April 16, 2012 version of this Agreement compared to the previous version of this Agreement dated July 7, 2011.

¹ The terms for the T1 Services were added as new Section 17 to this Agreement.