

DEFINITIONS – MASSACHUSETTS REGULATED SERVICES

"TOWARDEX"	TowardEX Technologies International, Inc.
"Customer"	Customer identified in the attached Order Form.
"Commencement Date"	The date upon which TOWARDEX begins provisioning an ordered Service as more fully described in the relevant Order Form.
"TOWARDEX Network"	Collectively, the fiber optic network, system capacity and related facilities (including, without limitation, routers, switches and communication channels) owned or controlled by TOWARDEX, or by another party contracted by TOWARDEX.
"Agreement"	The agreement between TOWARDEX and Customer to provide Service(s) that is comprised of these Terms & Conditions and each Order Form for each Service. .
"Order Form"	Form used for ordering a specific Service that is signed by both the Customer and TOWARDEX and is incorporated into and made part of the Agreement.
"Service(s)"	Private line data services, and Ethernet and Wavelength communications services that are intrastate only with A and Z locations within the Commonwealth of Massachusetts for retail business customers (i.e. non-residential customers) only, and do not include any voice or traditional telephone services.
"Term"	The period of time in which TOWARDEX provides a Service to Customer pursuant to an Order Form.
"Terms & Conditions"	The general terms and conditions that apply to the Services TOWARDEX provides to Customer.
"AUP"	TOWARDEX's Acceptable Use Policy as posted by TOWARDEX (currently http://www.towardex.com/go/aup).
"SLA"	The Service Level Agreement for each Service.
"Service Date"	Earlier of the date on which (a) TOWARDEX deems that the Service is available for Customer's use at either the TOWARDEX-defined demarcation point; or (b) Customer first uses the Service or the TOWARDEX Network.
"MRC"	A monthly recurring charge for a Service as set forth on the Order Form.
"NRC"	A non-recurring or one-time charge for a Service as set forth on the Order Form.
"Losses"	Costs, fees, liabilities, losses, damages or penalties, including reasonable legal fees.

TERMS & CONDITIONS – MASSACHUSETTS REGULATED SERVICES

1. STRUCTURE OF AGREEMENT

This Agreement is for Services that are regulated within the Commonwealth of Massachusetts and may not be used for other services. From time to time, the Parties may execute one or more Order Forms for TOWARDEX to provide Service, each of which shall be subject to these Terms and Conditions and the Order Forms with these Terms and Conditions shall form the Agreement. TOWARDEX reserves the right to refuse or reject any Customer request to execute a new Order Form in the event that Customer's account is not current.

2. SERVICE CHARGES AND BILLING

2.1 INSTALLATION CHARGE. If a NRC is specified in an Order Form, TOWARDEX will invoice Customer for and Customer will pay such NRC, upon the effective date of the Order Form ("Order Form Effective Date"). If the NRC is "estimated", Customer shall pay a portion thereof, as specified in such Order Form, on the Order Form Effective Date and the remaining balance of the NRC upon the Commencement Date, where the remaining balance shall be the actual charges incurred by TOWARDEX to complete the installation less the estimated portion. The balance of the actual Installation Charge will be invoiced by TOWARDEX and paid by Customer within thirty (30) days of such invoice.

2.2 RECURRING CHARGE. TOWARDEX will invoice Customer for each MRC in advance and Customer will pay the MRC within thirty (30) days from the date of such invoice. TOWARDEX will begin to invoice the MRC on the Commencement Date. Invoices for partial months will be pro-rated.

2.3 PREPAYMENT. If a prepayment ("Prepayment") is specified in an Order Form, TOWARDEX will invoice Customer for and Customer will pay such Prepayment upon the Order Form Effective Date. If a Prepayment is for a portion of a Term, the amount of such will be applied as a credit to the final MRC at the end of such Term.

2.4 O&M CHARGES. If an operation and maintenance charge ("O&M Charge") is specified in an Order Form, TOWARDEX will invoice Customer for and Customer will pay such O&M Charge beginning on the Commencement Date in advance of each month during the Term and within thirty (30) days from the date of such invoice.

2.5 ADDITIONAL CHARGES. If any charges in addition to a MRC and/or NRC apply to a Service, such charges shall be agreed to an included in the Service's Order Form and TOWARDEX will invoice Customer and Customer will pay such invoices within thirty (30) days of receiving such invoice.

2.6 LATE PAYMENTS. All invoices must be paid in accordance with their terms without setoff or deduction, and late payments will accrue interest on the unpaid sum as of the date of the invoice at the lesser of (i) the highest legal rate of interest permitted in the Massachusetts or (ii) one and one-half percent (1.5%) per month. TOWARDEX may apply any payments received by TOWARDEX to any one of Customer's then outstanding charges.

2.7 U.S. DOLLARS. Unless otherwise specified, all payments must be made by Customer to TOWARDEX in United States of America dollars.

2.8 SERVICE RELOCATION, ADDITIONS AND UPGRADES. Any request for the addition of new Service(s), Service upgrades, or relocations will be subject to additional fees/charges. If a prior Service location remains installed after a new Service location is installed, Customer will be responsible for charges for both Service locations until terminated as provided for each Service.

2.9 SPECIAL CONSTRUCTION. Subject to the prior mutual agreement of TOWARDEX and Customer, TOWARDEX may provide special construction services on a case-by-case basis for the provision of a Service. Pricing for special construction will be provided on an individual case basis ("ICB").

3. Taxes, Fees & Regulatory Charges

3.1 TAXES AND FEES. All charges for Service are exclusive of Applicable Taxes (as defined below). Except for taxes based on TOWARDEX' net income, Customer will be responsible for all applicable taxes, fees, surcharges, or other charges or impositions that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Service(s) or equipment (collectively "Applicable Taxes"). Customer shall pay such taxes or charges and indemnify TOWARDEX from any liability or expense incurred by TOWARDEX in connection with such taxes or charges. If Customer is entitled to an exemption from any Applicable Taxes for a particular Service, Customer is responsible for presenting TOWARDEX with a valid exemption certificate in a form reasonably acceptable to TOWARDEX. TOWARDEX will give effect to any such exemption on a prospective basis from and after TOWARDEX's receipt of such exemption certificate.

3.2 REGULATORY AND LEGAL CHANGES. Pursuant to M.G.L. c. 159 Section 19F, if a rate for a Service is to be increased, TOWARDEX shall provide 30 days' prior notice to Customer of such increase.

4. TERM

4.1 EFFECTIVE DATE. This Agreement commences on the execution of an Order Form for Service and continues through the expiration or termination of the Term of such Order Form, unless earlier terminated as provided herein.

4.2 COMMENCEMENT DATE. The Term for each Order Form shall begin on the Commencement Date of the related Service and shall remain in effect until the expiration of the period so specified. Upon the expiration of the initial Term set forth on an Order Form, the Agreement will renew for successive terms (each a "Renewal Term") equal in length to the initial Term set forth in the Order Form, unless and until terminated as provided herein. Each Renewal Term and the initial Term shall be a "Term".

5. TERMINATION, RESTRICTION OR SUSPENSION

5.1. TOWARDEX may also restrict, suspend or terminate the Agreement, Customer's use of or access to any Service, or both, at any time if (a) Customer is in material breach of the Agreement; (b) in TOWARDEX's sole judgment the TOWARDEX Network or TOWARDEX's ability to provide services to other customers is imminently threatened by any act or failure to act by or on behalf of Customer; (c) Customer's account is unpaid sixty (60) days after date of invoice; or (d) Customer breaches TOWARDEX's AUP, which may be amended from time-to-time, and is

effective upon posting on the TOWARDEX website. By using a Service, Customer agrees to be bound by the terms of the AUP and subsequent revisions thereto.

5.2. If Customer defaults in any of its payment obligations under the Agreement, Customer agrees to pay TOWARDEX's reasonable expenses, including but not limited to legal and collection agency fees, incurred by TOWARDEX in enforcing its rights. All termination notices by Customer must be sent separately for each Order Form (including terminating Order Form for one Service location after Service is switched to a new Service location).

5.3. Customer may terminate a Service: (a) at the end of a Term or end of a Renewal Term by providing TOWARDEX with at least thirty (30) days written notice. In the event Customer breaches any obligation hereunder that is not cured within ten (10) days of receipt of notice of such breach, then Service may be discontinued subsequent to the following notice obligations. TOWARDEX shall provide a written notice of discontinuance of the Service specifying the reason(s) for discontinuance fifteen (15) days prior to discontinuance via First Class U.S. Mail and followed by a second written notice sent via First Class U.S. Mail five (5) days prior to discontinuance of the Service.

5.4. Notwithstanding any provisions herein to the contrary, in the event any Customer is unable to resolve a dispute with TOWARDEX, the Customer may file a complaint with the Massachusetts Department of Telecommunications and Cable (the "Department"). Pursuant to the Department's authority under M.G.L. c. 159, the Department has discretion whether to adjudicate complaints between non-residential Customers and TOWARDEX.

6. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

6.1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS," AND NEITHER TOWARDEX NOR ANY OF ITS PROVIDERS, LICENSORS, OFFICERS, EMPLOYEES, OR AGENTS MAKES ANY WARRANTY, CONDITION OR GUARANTEE WITH RESPECT TO THE SERVICES OR AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICES, UNDER THIS AGREEMENT OR OTHERWISE. THE SERVICES ARE PURCHASED WITH KNOWLEDGE OF THIS WARRANTY LIMITATION. TOWARDEX EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. TOWARDEX DOES NOT MONITOR, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR, THE CONTENT OF ANY COMMUNICATION TRANSMITTED BY CUSTOMER OR OTHERS, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR UNAUTHORIZED USE OR MISUSE OF THE SERVICES.

6.2. WITHOUT PREJUDICE TO OR LIMITING OF TOWARDEX'S RIGHT TO RECEIVE PAYMENT FOR SERVICES, TOWARDEX'S ENTIRE LIABILITY FOR ALL CLAIMS OF WHATEVER NATURE (INCLUDING CLAIMS BASED ON NEGLIGENCE) ARISING OUT OF THIS AGREEMENT AND ALL OTHERS BETWEEN CUSTOMER AND TOWARDEX, AND THE PROVISION BY TOWARDEX OF FACILITIES, TRANSMISSION, DATA, SERVICES OR EQUIPMENT INCLUDING, BUT NOT LIMITED TO, DAMAGE TO REAL/PERSONAL PROPERTY, SHALL NOT EXCEED THE LESSER OF (A) THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE AT ISSUE IN THE PRIOR SIX (6) MONTHS TO THE ACTION GIVING RISE TO THE CLAIM, OR (B) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) IN TOTAL; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY FOR DEATH OR PERSONAL INJURY CAUSED BY TOWARDEX, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

6.3. CUSTOMER RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND NOT SUBJECT TO TOWARDEX'S CONTROL. CUSTOMER AGREES THAT TOWARDEX SHALL NOT BE LIABLE FOR DAMAGES INCURRED OR SUMS PAID WHEN THE SERVICES ARE TEMPORARILY OR PERMANENTLY UNAVAILABLE DUE TO MALFUNCTION OF, OR CESSATION OF, INTERNET SERVICES BY NETWORK(S) OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO TOWARDEX'S CONTROL, OR FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF CUSTOMER INFORMATION CARRIED ON SUCH NETWORKS OR INTERNET SERVICE PROVIDERS. TOWARDEX SHALL HAVE NO LIABILITY HEREUNDER FOR DAMAGES INCURRED OR SUMS PAID DUE TO ANY FAULT OF CUSTOMER OR ANY THIRD PARTY, OR BY ANY HARMFUL COMPONENTS (SUCH AS COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, AND 'DENIAL OF SERVICE' ATTACKS). TOWARDEX IS NOT LIABLE FOR ANY BREACH OF SECURITY ON THE CUSTOMER'S NETWORK, REGARDLESS OF WHETHER ANY REMEDY PROVIDED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER AGREES THAT IT WILL NOT HOLD TOWARDEX RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICES (INCLUDING THOSE WITH WHOM TOWARDEX MAY CONTRACT TO OPERATE THE SERVICES), OR HOLD A THIRD PARTY RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, TOWARDEX IN CONNECTION WITH THE SERVICES. WITHOUT LIMITING THE FOREGOING, CUSTOMER AGREES THAT IT WILL NOT HOLD TOWARDEX RESPONSIBLE FOR (A) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, (B) LOSS OF OR DAMAGE TO CUSTOMER'S RECORDS OR DATA OR THOSE OF ANY THIRD PARTY, OR (C) LOSS OR DAMAGE TO CUSTOMER ASSOCIATED WITH THE INOPERABILITY OF CUSTOMER'S EQUIPMENT OR APPLICATIONS WITH ANY COMPONENT OF THE SERVICES OR THE TOWARDEX NETWORK. CUSTOMER AGREES TO MAKE ALL CLAIMS RELATED TO THE SERVICES DIRECTLY AGAINST TOWARDEX, AND WAIVES ANY RIGHT TO RECOVER DAMAGES (DIRECTLY OR BY INDEMNITY) RELATED TO THE SERVICES BY CLAIMING AGAINST OR THROUGH A THIRD PARTY TO THIS AGREEMENT.

6.4. NEITHER TOWARDEX NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING (INCLUDING SUSPENDING OR DISCONTINUING SERVICES) OR SUPPORTING THE SERVICES SHALL BE LIABLE TO CUSTOMER, ANY REPRESENTATIVE, OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SERVICES OR INABILITY TO USE THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE).

6.5. NO ACTION OR PROCEEDING AGAINST TOWARDEX MAY BE COMMENCED BY THE CUSTOMER MORE THAN ONE (1) YEAR AFTER THE LAST DAY ON WHICH THE SERVICE WHICH IS THE BASIS FOR THE ACTION IS RENDERED, AND CUSTOMER ACKNOWLEDGES THAT THIS LIMITATION CONSTITUTES AN EXPRESS WAIVER OF ANY RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS WHICH WOULD OTHERWISE AFFORD ADDITIONAL TIME FOR SUCH A CLAIM.

7. INDEMNITY

Customer will indemnify, defend and hold harmless TOWARDEX and its directors, officers, employees, affiliates, and its agents and subcontractors from and against any claims, suits, actions, and proceedings from any and all third parties, and for payment of any Losses, to the extent such Losses arise (a) as a result of noncompliance by Customer with its obligations under the Agreement; (b) from any and all claims by any of Customer's customers or other third party end users in connection with a Service (including, without limitation, any claims regarding content transmitted using a Service or violation of data protection legislation), regardless of

the form of action, whether in contract, tort, warranty, or strict liability; (c) from claims of copyright infringement and all manner of intellectual property claims, defamation claims, claims of publication of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, and claims of infringement of data protection legislation, to the extent such Losses are based upon (i) the content of any information transmitted by Customer or by any of Customer's customers or authorized end users, (ii) the use and/or publication of any and all communications or information transmitted by Customer or by any of Customer's customers or authorized end users, or (iii) the use of Service(s) by Customer in any manner inconsistent with the terms of this Agreement, including without limitation the AUP.

8. TITLE TO INFORMATION

Each Party agrees that by entering into this Agreement or provisioning or using any Services, each Party shall retain title to its information and no license with respect to information or any intellectual property of one Party shall be granted to the other Party.

9. ASSIGNMENT

Customer shall not assign or transfer its rights or obligations under this Agreement without TOWARDEX's prior written consent, which consent may not be unreasonably withheld, except that Customer may assign this Agreement upon notice and without TOWARDEX's consent to a person, firm, corporation, partnership, association, trust or other entity (i) that controls, is controlled by or is under common control with Customer or (ii) into which it is merged or consolidated or which purchases all or substantially all of its assets; provided that the assignee assumes all liabilities hereunder in writing prior to the effectiveness of such assignment. Any assignment or transfer without the required consent will be void and will be considered a material breach of this Agreement. Upon any permitted assignment, Customer will remain jointly and severally responsible for the performance under this Agreement, unless released in writing by TOWARDEX, and this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

10. FORCE MAJEURE

Neither Party will be considered in breach of this Agreement nor liable under this Agreement for any delays, failures to perform, damages or losses, or any consequence thereof, caused by or attributable to an event of "Force Majeure," which is defined as any cause beyond the reasonable control of the party claiming relief, including without limitation the action by a governmental authority (such as a moratorium on any activities related to this Agreement or changes in government codes, ordinances, laws, rules, regulations, or restrictions occurring after entering an Order Form for Service), third-party labor dispute, flood, earthquake, fire, lightning, epidemic, war, act of terrorism, riot, civil disturbance, act of God, sabotage, fiber cut caused by a third-party or failure of a third party to recognize a permit, authorization, right-of-way, easement, right, license or other agreement obtained by TOWARDEX to construct and operate its facilities or network.

11. NOTICES

All notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including invoices) must be sent in writing by e-mail, courier or first class mail (postage prepaid), and addressed to the recipient Party at the appropriate contact point listed on the Order Form. In addition, TOWARDEX shall have the right to send Customer notices, other than notices for default or termination, to Customer's email address as contained on TOWARDEX's customer contact list. Such email notification is deemed delivered on the day sent unless returned to sender.

12. SERVICE USE AND INTERRUPTION

12.1. Customer's use of TOWARDEX's Service and TOWARDEX Network may only be for lawful purposes and must comply with TOWARDEX's AUP. Transmission of any material in violation of any law, regulation or the AUP is strictly prohibited. Access to other networks connected to TOWARDEX Network must comply with such other networks' rules.

12.2. TOWARDEX's obligations and Customer's exclusive remedies for failure of TOWARDEX Network or any Service are stated in the applicable SLA.

13. ADDITIONAL PROVISIONS

13.1 **GOVERNING LAW.** This Agreement will be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts without giving effect to its principles of conflicts of laws.

13.2 **SURVIVAL.** The Parties' respective covenants, together with obligations of indemnification, disclaimer of warranty and limitations of liability shall survive the expiration, termination or rescission of this Agreement and continue in full force and effect.

13.3 **NO THIRD-PARTY BENEFICIARIES.** The covenants, undertakings, and agreements set forth in this Agreement are solely for the benefit of and enforceable by the Parties or their respective successors or permitted assigns.

13.4 **RELATIONSHIP OF THE PARTIES.** The relationship between the Parties hereunder is not that of partners or agents for one another and nothing contained in this Agreement may not be deemed to constitute a partnership, joint venture or agency agreement between them.

13.5 **REMEDIES NOT EXCLUSIVE.** Except as otherwise expressly provided, the rights and remedies set forth in this Agreement are in addition to, and cumulative of, all other rights and remedies at law or in equity.

13.6 **HEADINGS; SEPARABILITY.** The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. In the event any term of this Agreement is held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will be in any way affected.

13.7 **NO IMPLIED WAIVER.** No failure to exercise and no delay in exercising, on the part of either Party, any right, power or privilege hereunder will operate as a waiver, except as expressly provided herein.

13.8 **COUNTERPARTS.** This Agreement shall be binding upon the execution of an Order Form which may be executed in counterparts, including by facsimile transmission, each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

14. RESTRICTIONS

Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by any government within whose jurisdiction Customer operates or does business.

15. TOWARDEX EQUIPMENT

Customer shall have no right or interest in any TOWARDEX-supplied equipment other than the right to use such equipment during the associated Service's Term while payments are current. Customer shall be liable to TOWARDEX for any damage to such equipment caused by Customer or Customer's representatives, agents, employees or customers.

16. EARLY TERMINATION CHARGES

16.1. If an Order Form is terminated prior to expiration by reason of: (i) Customer termination if such termination is not an exercise of Customer's rights or remedies under the Agreement, or (ii) Customer defaults in any of its payment obligations under the Agreement or otherwise defaults under this Agreement, Customer agrees to pay a termination charge ("Early Termination Charge") to TOWARDEX.

16.2. Early Termination Charge will be calculated as an amount equal to the aggregate of: (i) all incurred and unpaid NRC, plus (ii) all remaining MRC until the end of the Term or twelve (12) months-worth of MRC, whichever is lesser.

16.3 Customer acknowledges that because actual damages to TOWARDEX caused by early termination of an Order Form or Service are difficult to determine, the Early Termination Charge is a reasonable liquidated damage and is not a penalty. Any subsequent reconnections of the Service shall result in additional reconnection charges to Customer at TOWARDEX's then-prevailing rates. Notwithstanding the foregoing, TOWARDEX may seek all other available remedies in law and in equity in the case of Customer's default resulting from any reason, other than nonpayment.

17. SERVICE LEVEL AGREEMENT

17.1 **PACKET LOSS AND LATENCY.** For Ethernet Private Line or "EPL" Services, TOWARDEX monitors the aggregate packet loss and transmission latency within TOWARDEX's packet transport infrastructure. TOWARDEX does not monitor the packet loss or transmission latency of specific Customer interfaces or any other Customer facilities. After discovering or being notified by Customer of packet loss in excess of one-half percent (0.5%) ("Excess Packet Loss") or transmission latency ("Latency") exceeding 5 milliseconds from the round-trip delay ("RTD") value specified in the Service's Order Form, TOWARDEX will use commercially reasonable efforts to determine the source of such Excess Packet Loss or Latency and to correct such problem to the extent that the source of the problem is on the TOWARDEX Network.

17.2 **PACKET LOSS AND LATENCY REMEDY.** After being notified of any Excess Packet Loss or Latency on the TOWARDEX Network, if TOWARDEX fails to remedy such Excess Packet Loss or Latency within two (2) hours of notice or otherwise becoming aware of Excess Packet Loss or Latency, TOWARDEX will credit Customer's account the pro-rata monthly charges (based upon the number of hours of Excess Packet Loss or Latency that exceeds the initial two (2) hours) for such continuous Excess Packet Loss or Latency. In no event shall credits exceed 50% of the MRC for the affected Service in any one (1) calendar month. All credits shall be contingent upon use of TOWARDEX's measurements for Latency and Excess Packet Loss.

17.3 **NETWORK AVAILABILITY AND REMEDY.** If a Service's Network Availability criteria is not met, and TOWARDEX records such failure in the TOWARDEX trouble ticket system, Customer is entitled to a credit, after the specified Downtime Before a Credit is Provided from the table below occurs, of 1/30th of the MRC for the Ethernet or Wavelength Service for each calendar day (or portion thereof) that the availability did not meet the Network Availability criteria as listed in the table below.

Credits for Network Availability shall not exceed 100% of the MRC for the associated Service in any given calendar month.

Network Availability Criteria – Ethernet and Wavelength Services (Massachusetts)

Service Configuration	Network Availability	Downtime Before a Credit is Provided
Single Path EPL	99.9%	45 minutes
Protected Path EPL	99.99%	5 minutes
Fully Protected EPL	99.999%	1 minute
Wavelength Single Path	99.9%	45 minutes
Wavelength Protected Path	99.99%	4 minutes

When a Service is designated as:

Single Path, there is one path only without redundancy in network hardware (e.g. an Ethernet card) and without a redundant or back-up power supply.

Protected Path, there are dual or redundant network paths, but there is no redundancy in network hardware and there is no redundant or back-up power supply.

Fully Protected, there are dual or redundant paths and network hardware, and redundant or back-up power supplies.

17.4 **NORMAL MAINTENANCE.** Normal Maintenance refers to upgrades of hardware or software, upgrades to increase capacity or routine checks of facilities. Normal Maintenance may temporarily degrade the quality of the Service, including causing a possible outage of a Service.

Normal Maintenance shall not give rise to credits for an affected Service. TOWARDEX shall provide Customer at least two (2) days prior notice of Normal Maintenance.

Service to a Customer without any additional construction, installation of facilities or securing additional access rights.

17.5 EMERGENCY MAINTENANCE. Emergency Maintenance refers to efforts to correct network conditions that are likely to cause a material degradation of Service, an outage, or threat to the TOWARDEX Network that require immediate action. Emergency Maintenance may degrade the quality of the Services, including causing possible outages. Emergency Maintenance shall not entitle Customer to credits for an affected Service. TOWARDEX may undertake Emergency Maintenance at any time deemed necessary and shall endeavor to provide prior notice of Emergency Maintenance to Customer or if prior notice is not practical then as soon as is commercially practicable thereafter.

In the event additional facilities are required, construction, securing of additional rights such as building access, riser rights, or meet-me-room rights, then the MRC, NRC and any applicable special construction charges will be quoted ICB, or individual case basis.

17.6 CUSTOMER REQUEST CREDIT. Customer must notify TOWARDEX within five (5) business days from the time Customer becomes eligible for a credit in order to receive such credit. Failure to comply with this notice requirement will forfeit Customer's right to such credit.

17.7 LIMITATION ON REMEDIES. Customer may be entitled to multiple credits arising from separate events for a particular Service in a calendar month, however, under no circumstances shall the aggregate of such credits exceed 100% of the MRC for that Service. Notwithstanding anything to the contrary, Customer will not receive more than one (1) credit for any one (1) event that may otherwise entitle Customer to credits. As an example, if one (1) event causes both Latency and Excess Packet Loss deficiencies, only one credit shall be afforded to the Customer. Sections A-2, A-3 and A-5 above state Customer's sole and exclusive remedy for any failure by TOWARDEX to provide adequate service levels, including but not limited to any outages or TOWARDEX Network congestion. TOWARDEX's suspension or modification of Service in accordance with the terms of the Agreement shall not be deemed to be a failure of TOWARDEX to provide adequate service levels under the Agreement. In no event shall Customer be entitled to any credit on its monthly charges to the extent that the latency or Downtime is caused by Customer attempting to exceed the maximum bandwidth of Customer's connection to the TOWARDEX Network or otherwise violating the terms of the Agreement. Customer shall not be entitled to any credit due to events caused by equipment on the Customer's side of the point of demarcation, any action or inaction by (or on behalf of) Customer including failure to give TOWARDEX timely access to a Service for troubleshooting or maintenance purposes, improper use of a Service, third-parties not affiliated with TOWARDEX, Normal Maintenance, Emergency Maintenance, and events of Force Majeure.

17.8 CUSTOMER TERMINATION RIGHTS. Customer may terminate a Service without liability if, in any single calendar month: (i) Network Availability for that Service is not met for twenty-four (24) continuous hours; or (ii) there are three (3) or more events entitling Customer to a credit in any contiguous 30 day period. Customer shall provide written notice of termination to the TOWARDEX Support Center and within five (5) business days following the end of the relevant calendar month. Such termination will be effective forty-five (45) days after receipt of such notice by TOWARDEX.

17.9 LIMITATIONS. Customer's election to receive credits for failure of a Service to meet its SLA criteria shall be the sole and exclusive remedy to Customer and TOWARDEX's sole and exclusive liability for any Service with respect thereto when termination rights under Section 17.8 are not available. In the event Customer elects to terminate a Service pursuant to Section 17.8, Customer shall not be entitled to any credits associated with the event(s) giving rise to termination and such termination shall be Customer's sole and exclusive remedy and TOWARDEX's sole and exclusive liability with respect thereto.

18. RATES AND CHARGES FOR INTRASTATE ETHERNET PRIVATE LINE AND WAVELENGTH SERVICES IN MASSACHUSETTS

18.1 NON-RECURRING CHARGES OR NRC

Description of Services	1Yr Term	3Yr Term	5Yr Term
EPL	\$500	\$0	\$0
Wavelength	\$1,100	\$0	\$0

18.2 MONTHLY RECURRING CHARGES OR MRC

Description of Services	1Yr Term	3Yr Term	5Yr Term
EPL 100 Mbps	\$350	\$275	\$250
EPL 1 Gbps	\$350	\$275	\$250
EPL 10 Gbps	\$500	\$450	\$350
EPL 100 Gbps	\$4,500	\$3,500	\$3,000
Wavelength 1 Gbps	\$900	\$750	\$650
Wavelength 10 Gbps	\$500	\$450	\$350
Wavelength 100 Gbps	\$3,500	\$2,400	\$2,250

18.3 LIMITATIONS ON RATES AND CHARGES. All rates and charges in Sections 18.1 and 18.2 above apply only to delivering a Service to a location where TOWARDEX is established with access rights, sufficient backhaul capacities, fiber, risers and all other facilities to hand-off