



Managed Services Agreement

This is an agreement (“Agreement”) for Managed Services and related services and/or features (“Services”) between you and PNG Telecommunications, Inc. d/b/a Powernet (“Powernet”). This Agreement and any Service Orders explain the terms and conditions upon which we agree to provide you Service and products and you agree to accept these terms and conditions with the Service and products. If there is any conflict between this Agreement and a Service Order, this Agreement shall control. Services offered by Powernet to Customer for purchase are described in this Agreement and the Service Orders executed by both parties. The Services may consist of services provided directly by Powernet and also of services procured by Powernet from third party suppliers. The words “we”, “us”, “our” or “Powernet” refers to Powernet. The words “you”, “your”, or “Customer” refers to the person who is completing this Agreement. You represent that you have been authorized to accept this Agreement on behalf of your Company. We reserve the right to change these terms and conditions from time to time. Posting of the updated Service Agreement will constitute notice to you of any such changes. Changes will be effective upon posting. You remain responsible for regularly reviewing these terms and conditions. Your continued use of the Services after the date of such changes constitutes your acceptance of and agreement to such changes.

1. Description.

Customer will receive Standard Managed Services with purchase of equipment, and has the choice of upgrading to Deluxe or Premium Managed Services. Below is a description of each Managed Service Level.

A. Standard

The Standard Service is our basic service model that is included with every purchase of equipment. It gives Customer the ability to self-manage the equipment. It offers the following features:

- 24x7 Network Operations Center access.
- Powernet will remotely monitor up/down status, with our state of the art network monitoring system, on all Customer equipment.
- Includes Basic Moves, Adds, and Changes to Powernet equipment. This can include button changes, extension changes, or changes in DID routing for Powernet provided phone systems. For wireless products, this will include Basic Wireless LAN changes. Standard service MACs should require less than one (1) hour of work.
- Software and firmware updates on required hardware. Powernet will provide Customer access to appropriate resources to self-install software or firmware.
- Provide on-site support if issue cannot be resolved in a reasonable time. Rates for on-site support are listed on the Service Order.

B. Deluxe

The Deluxe Service is our middle-tier service that provides a higher level of support compared to the Standard Service. It offers the following features:

- Customer has the ability to manage their phone system through a web portal.
- 24x7 Network Operations Center access.
- PNG will remotely monitor up/down status of Customer equipment, but will also monitor SNMP statistics at applicable equipment. This can include, but is not limited to: link utilization, CPU utilization, and other valuable statistics.
- Includes Basic Moves, Adds, and Changes, as well as Advanced Moves, Adds, and Changes (MACs). These Advanced MACs will include a scope of work greater than one (1) hour but less than two (2) hours.
- Software and firmware updates on all applicable equipment.
- Provide on-site support if problems cannot be resolved in a reasonable time. Rates for on-site support are listed on the Service Order.

C. Premium

The Premium Service is the highest level of support that Powernet offers, which is perfect for Customers whose technology is a critical business need. It offers the following features:

- Customer has the ability to manage their phone system through a web portal.
- 24x7 Network Operations Center access.
- Powernet will remotely monitor up/down status of Customer equipment, but will also monitor SNMP statistics at applicable equipment and alerting that can be automated and sent to the Customer monthly via email. This can include, but is not limited to: link utilization, CPU utilization, and other valuable statistics.
- Includes Basic Moves, Adds, and Changes, and Advanced Moves, Adds, and Changes (MACs), as well as complete Remote System Management for any work greater than two (2) hours.
- Software and firmware updates on applicable equipment.
- Provide on-site support if problems cannot be resolved in a reasonable time. Rates for on-site support are listed on the Service Order.

D. Equipment

The types of equipment that will be managed are as follows:

- Phones - Includes any model sold plus phone server that may be located on the Customer premise provided by Powernet.
- Access Point - Includes any wireless access point that may be located on the Customer premise provided by Powernet.
- Analog Telephone Adapter (ATA) - Includes any ATA located on the Customer premise.
- Receiver - Includes any receiver located on the Customer premise provided by Powernet.
- Switch - Includes any Layer 2 or Layer 3 switch located on the Customer premise provided by Powernet.
- Router - Includes any router or IP Business Gateway located on the Customer premise provided by Powernet.
- Controller - Includes any wireless controller located on the Customer premise provided by Powernet.
- Firewall - Includes any firewall located on the Customer premise provided by Powernet. If Customer has an existing firewall on the Customer premise, Powernet needs to approve such firewall and ensure Powernet can get required access to the firewall.

2. Term.

The initial term is dependent on the package selected on the Service Orders. The initial term for the Services chosen by Customer shall commence on the date that Powernet makes the Services available (“Effective Date”). Customer’s obligation to pay for all Services shall commence on the Effective Date. Upon the expiration of any initial or subsequent term, the term will automatically renew for succeeding terms of one month at Powernet’s then current rates unless a party provides thirty (30) days written notice of termination. Each Service Order placed under this Agreement shall have its own terms and this Agreement shall continue to govern the parties’ duties and rights with

respect to such Service Orders until the expiration of its term or any succeeding term or unless the Service Order is terminated as permitted by this Agreement. You are purchasing the Service for the full term, meaning that if you attempt to disconnect Service prior to the end of the applicable term or Powernet terminates your Service due to your breach of this Agreement or any Service Order, you will be responsible for all charges relating to the then-current term, including unbilled charges, all installation costs, a disconnection fee, if applicable, and the monthly charges for all of the remaining months in the term, all of which will immediately become due and payable. If you cancel your Service prior to the Effective Date, you will be responsible to pay a cancellation recovery fee, all installation costs and any disconnection fee, if applicable.

3. Ordering Service.

a. Service Schedules and Service Orders. All Services shall be ordered on Powernet's standard Service Order forms in effect at the time of ordering. By submitting any Service Order, Customer represents and warrants that the information provided by Customer on the Service Order forms is complete, true, and accurate to the best of Customer's knowledge and that the Service Order form contains no misleading statements or omissions. Powernet may accept or reject any Service Order submitted by Customer in its sole discretion.

b. Customer Changes to Service Orders. Any terms or conditions contained in a Service Order submitted by Customer that conflict with the terms and conditions in this Agreement are hereby objected to by Powernet and shall not constitute part of the agreement unless explicitly accepted by Powernet in writing. No action by Powernet (including, without limitation, provision of Services to Customer pursuant to such Service Order) shall be construed as binding or estopping Powernet with respect to such terms or conditions.

4. Charges and Rates.

a. Charges for Service. All charges and fees are stated on your Service Order. The monthly charges for Service are per equipment device and do not include taxes or surcharges for governmental fees. Customer will be responsible for all applicable taxes and surcharges that arise in any jurisdiction.

b. Billing Period. Powernet will bill Customer for Monthly Recurring Charges in advance and for charges for installation and other non-recurring charges that Customer shall pay in advance of any Service being provisioned by Powernet. On the first billing for Monthly Recurring Charges, Powernet will prorate the billing from the Effective Date in addition to one month in advance.

c. Billing. For each billing period, Powernet will send to Customer via email a notice that Powernet has prepared Customer's invoice and that Customer may log on to Powernet's web based Customer Portal at <https://portal.pngcom.com/> to view the invoice.

d. Payment. All invoices are due and payable in U.S. dollars within twenty (20) days of the date on which Powernet sends the email notifying Customer that Customer's invoice is available (the "Due Date"). Customer's payment must be received on or before the Due Date in order for it not to be considered late. Restrictive endorsements or statements on checks accepted by Powernet will not be binding upon Powernet. Customer shall pay a "Returned Check Fee" of thirty dollars (\$30.00) for any check returned for insufficient funds. If payment in full of undisputed amounts is not received on or before the Due Date, Customer will be considered to have breached this Agreement and Powernet shall have the right, after three (3) business days' notice, to suspend or terminate Service and/or in Powernet's sole discretion, draw upon any security held by Powernet.

e. Late Payment. If Customer fails to remit payment in full by the Due Date, Powernet, in addition to other remedies available to it under this Agreement or at law, may charge Customer a late fee of the lesser of 1.5% per month or the maximum fee allowed by law of the unpaid balance which shall accrue from the Due Date of the invoice.

f. Service Appointment Charges. You shall be liable for payment of charges reasonably incurred by Powernet for a service appointment if the reason for the service appointment is not due to Powernet Service or equipment. You shall also be liable for payment of charges reasonably incurred by Powernet including but not limited to: (i) charges due to your request to expedite Service availability to a date earlier than the date in a Service Order; (ii) charges due to your request to change an installation date to a date other than in a Service Order; (iii) changes to a Service Order after Powernet acceptance; (iv) expense incurred for Service redesign or modification; (v) reinstallation charges following any suspension of Service by Powernet; and (vi) disconnection charges.

5. Credit and Assurance of Payment.

Maintenance of acceptable credit and adequate assurance of payment, both as determined by Powernet in its discretion, are conditions for the commencement and continuation of provision of the Services by Powernet. By signing this Agreement, you permit Powernet to complete a credit check on you before the commencement of Services and during the term of this Agreement. If at any time Powernet, in its sole discretion, believes that Customer presents an undue risk of nonpayment, then Powernet may require a form of security for payment. Failure of Customer to provide a form of security requested by Powernet within two (2) business days of Powernet's request shall be a material breach of Customer's obligations under this Agreement and shall entitle Powernet to all remedies Powernet would have for nonpayment of an undisputed amount due.

6. Fraud. Having Managed Services with Powernet may reduce your risk of fraud or being hacked. However, it does not totally eliminate the risk.

7. Customer Warranties.

a. Customer Provided Network Address and Security Measures. Customer shall be solely responsible for providing the correct network address to Powernet for monitoring purposes. Customer is responsible for establishing and maintaining adequate security measures including but not limited to maintaining codes, passwords, encryption or other features necessary to restrict access to Customer's computers, network, servers, or other equipment used by the Services.

b. Breach of Customer Warranties. Any breach of any of Customer's warranties pursuant to this Section 7 of this Agreement will constitute a material breach of this Agreement and Powernet may suspend or terminate the Service immediately and without notice. If Customer breaches any of its warranties, Customer will be solely liable for and will indemnify, defend and hold Powernet and its respective officers, directors, employees, contractors and agent harmless from all claims, demands, costs, damages, losses, liabilities and expenses of any nature arising from such breach, including indirect, special, incidental, consequential, punitive or reliance damages and any costs including attorneys' fees associated with enforcing any of these provisions.

c. Customer Equipment and Software. Customer is responsible for management of all Customer owned equipment connected to any equipment that may have been supplied by Powernet, and that are out of the scope of the monitor and notify service administered by Powernet.

d. Equipment Replacement Policy. If Powernet provided equipment fails and cannot be corrected remotely, then Powernet will take all necessary steps to ship replacement equipment. Equipment is replaced at no cost under the assumption that equipment is under warranty. If equipment is not under warranty, customer will pay for cost of the equipment.

8. Limitation of Liability; Disclaimer of Warranties.

IN THE EVENT OF ANY BREACH OF THIS AGREEMENT OR ANY FAILURE OF THE SERVICES WHATSOEVER, NEITHER POWERNET NOR ANY OF POWERNET'S SUPPLIERS SHALL BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF POWERNET OR THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. USE OF POWERNET'S SERVICE IS SOLELY AT CUSTOMER'S OWN RISK. POWERNET EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY, FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. POWERNET MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE(S) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DO

WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE(S). NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM POWERNET OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

9. Indemnification.

Customer will defend, indemnify and hold harmless Powernet and its respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement including without limitation, attorneys' fees and all reasonable costs and expenses of litigation arising out of, resulting from, or based upon, any third party complaint, claim, action, proceeding or suit to the extent that such claim is from or in any way connected with any claims from Customer's use of the Services or Equipment including any unauthorized or illegal provision or use, any infringement by Customer or someone else using the Service with Customer's computer of any intellectual property or other proprietary right of any person or entity.

10. Miscellaneous.

a. Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control. In the event Powernet is unable to deliver Service as a result of force majeure, Customer shall not be obligated to pay Powernet for the affected Service for so long as Powernet is unable to deliver otherwise Force Majeure does not apply to Customer nonpayment.

b. Proprietary Information. Each party agrees to maintain in strict confidence the Agreement, including pricing, contained in this Agreement or in any Service Order and all plans, designs, drawings, trade secrets, business and other proprietary information of the other party which is disclosed pursuant to this Agreement. Neither party shall disclose to any third party such confidential information without the express written consent of the other party. No obligation of confidentiality shall apply to disclosed information which the recipient (i) already possessed without obligation of confidentiality, or (ii) develops independently, or (iii) rightfully receives without obligation of confidentiality from a third party, or (iv) must disclose due to reasons prescribed by law or due to court or official orders. The recipient shall immediately notify the other party of any disclosures made pursuant to this Section.

c. Trademarks. Neither Party shall take any actions, which will in any manner compromise the other Party's registered trademarks and /or service marks. Nothing in this Agreement grants a Party the right or license to use the other Party's trademarks.

d. Notices. All notices to be sent to a party pursuant to this Agreement shall be in writing and sent by (i) email effective when received, (ii) private courier, (iii) express mail priority next day delivery, or (iv) confirmed facsimile if sent during business hours. The address for notice for Powernet is below. Customer's is contained in the Service Order.

<u>Powernet's Contact</u>	<u>Legal Contact</u>
Name: Network Service Director	Name: Legal Department
Address: 8805 Governors Hill Drive, Suite 250	Address: 8805 Governors Hill Drive, Suite 250
Cincinnati, OH 45249	Cincinnati, OH 45249
Facsimile: 877-813-7419	Facsimile: 513- 645-4960
Email: Servicemanagement@powernetco.com	Email: legal@powernetco.com

e. Waiver and Amendment. The failure of either party to enforce any provision hereof on one or more occasions shall not constitute the permanent waiver of such provision. Any addition, deletion or modification to this Agreement shall not be binding on either party except by written amendment executed by both parties.

f. Interpretation. No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of this Agreement.

g. Choice of Law. This Agreement shall, in all respects, be governed by and construed and enforced in accordance with the laws of the State of Ohio, without respect to the state's conflict of laws provisions. For valuable consideration, both parties acknowledge and agree that any action to enforce or interpret the terms of this Agreement or relating to the Services to be provided by Powernet shall be instituted and maintained only in Hamilton County, Ohio. Customer hereby consents to the jurisdiction and venue of such court and waives any objection to such jurisdiction and venue. In the case of a suit to collect past due payments, the Parties agree that Powernet may, in its sole discretion, bring suit in the courts of any jurisdiction where Customer does business or has assets, and Customer hereby consents to such jurisdiction. If Powernet sends Customer's account to an outside collection agency or institutes collection proceedings against Customer, Powernet has the right to charge Customer for any collection fees.

h. Integration. This Agreement and any Service Orders supersede and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and covenants and all inducements to the making of this Agreement whether written or oral or whether made before execution of this Agreement.

i. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.

j. Survival. No termination of this Agreement shall affect the rights or obligations of either party with respect to payment or with respect to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, including without limitation, indemnification, limitation of liability, confidentiality, governing law and forum selection.

k. Severability. If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, then the provision shall be deemed modified to the minimum extent necessary to be valid.

l. Assignment. Neither party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other, which shall not be unreasonably withheld. Customer must be current on all payments required by this Agreement before any assignment is approved by Powernet. Any such assignment or transfer of Customer's rights or obligations without such consent shall constitute a default of a material obligation.

m. Costs and Attorneys' Fees. If a proceeding is brought for the enforcement of this Agreement or because of any claim of any kind arising out of or in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and other reasonable costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.