



NETWORK SERVICES AGREEMENT

This is an Agreement for Network Services that consists of networking consultation services that can include surveys, training, maintenance, diagrams and configurations of networking equipment and related services and/or features (“Services”) between you and PNG Telecommunications, Inc. dba Powernet (“Powernet”). This Agreement and any Service Orders explain the terms and conditions upon which we agree to provide you Service and you agree to accept these terms and conditions with the Service. 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 Order(s) 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 Network 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. Engagement. Customer hereby engages Powernet to provide the Services set forth on the 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 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. Any terms and 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.

2. Term. The term of this Agreement shall commence on the date hereof and, unless terminated earlier in accordance with Section 8 hereof, shall continue until the complete performance of all work set for on the Service Order.

3. Compensation; Terms of Payment. As consideration for its performance of the Services, Powernet shall be compensated for the time expended by Powernet in the performance of the Services and shall be compensated at the rates or in the amounts set forth on the Service Order. Powernet shall also be reimbursed for all reasonable expenses, including, without limitation, expenses for travel, incurred by Powernet, its employees and independent contractors in the performance of the Services. Powernet shall invoice Customer weekly for all charges incurred during the preceding week. Customer shall pay all such undisputed invoiced amounts within thirty (30) days of its receipt of Powernet’s invoice. Interest shall accrue on any delinquent undisputed invoiced amounts at a rate of one and one-half percent (1.5%) per month. If Customer disputes the amount of any portion of an invoice, Customer will notify Powernet within thirty (30) days of receipt of invoice, giving in writing its reasons for disputing the amount and any supporting documentation. Both parties will, in good faith, work to resolve any dispute so that resolved portions may be paid as provided herein.

4. Insurance. Powernet agrees to procure and maintain in its own name and at its own cost and expense in full force and effect during the term of this Agreement, policies of insurance as follows: Commercial General Liability, Automobile Liability, Umbrella Liability, and Workers Compensation and Employers’ Liability.

5. Intellectual Property. The following shall be deemed to be the sole property of Powernet, which property may be freely used by Powernet without any accounting to Customer: (i) all intellectual property and know-how jointly developed by Powernet and Customer during the performance of the Services, (ii) all intellectual property and know-how developed during the performance of the Services that is not clearly derivative from Customer’s proprietary information, and (iii) all new intellectual property and know-how developed solely by Powernet in the performance of the Services (collectively, the “Work Product”); provided, however, that Powernet shall grant to Customer a perpetual, nonexclusive, nontransferable worldwide license to use the Work Product in connection with Customer’s business. Customer shall use commercially reasonable efforts to cause all title and interest in the Work Product to vest in Powernet, including, without limitation, executing whatever documents, instruments of assignment, transfer, conveyance or authorization and agreements as may be reasonably requested by Powernet. All Work Product shall belong exclusively to Powernet and its designees. Customer agrees and acknowledges that Powernet’s Work Product shall not be considered a work-for-hire. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by Powernet automatically upon creation thereof, then Customer agrees to assign, and hereby assigns, to Powernet and its designees the ownership of such Work Product, including all related intellectual property rights, without the necessity of further consideration.

6. Confidentiality. Each party hereby covenants and agrees that, except as expressly permitted by this Agreement, it shall not at any time: (i) use Confidential Information (as defined below) except as reasonably required to perform the Services; or (ii) disclose Confidential Information to any third party, without the prior written authorization of the party to whom such Confidential Information belongs. Furthermore, each party shall at all times protect the other party's Confidential Information with the same degree of care, but no less than a reasonable degree of care, as it treats or protects its own confidential information of a like nature. As used herein, the term "Confidential Information" means all trade secrets and proprietary information belonging to any party, regardless of the medium on which such information is presented. Confidential Information shall also mean any information that is marked or otherwise identified as confidential or proprietary.

7. Non-Solicitation of Employees and Independent Contractors. Unless the parties otherwise agree in writing, Customer shall not, during the performance of the Services and for a period of one (1) year following the completion of the Services, directly or indirectly, either on its own account or for any person, firm, partnership, corporation or other entity, (a) solicit, interfere with, or endeavor to cause any employee, independent contractor, representative or agent of Powernet to leave his or her employment or discontinue his or her relationship with Powernet, or (b) induce or attempt to induce any such employee, independent contractor, representative or agent of Powernet to alter the terms of his or her employment or engagement with Powernet.

8. Equitable Remedies. The parties agree and acknowledge that failure to comply with the confidentiality obligations contained in Section 5 of this Agreement will cause irreparable harm for which they will have no adequate remedy at law. As a result, the parties agree that each of them will be entitled to the issuance by a court of competent jurisdiction of an injunction, restraining order or other equitable relief restraining the other party from committing or continuing any such violation, without the necessity of showing damages. Any right to obtain an injunction, restraining order or other equitable relief hereunder will not be deemed a waiver of any right to assert any other remedy which a party may have in law or in equity.

9. Termination. This Agreement shall terminate prior to the expiration of its term as follows:

(i) At the non-breaching party's option, effective immediately, if a party materially breaches, violates or otherwise fails to comply with any of the terms contained in this Agreement and fails to cure such breach within sixty (60) days of receiving written notice of such breach from the non-breaching party;

(ii) At Powernet's option, effective immediately, if Customer fails to pay any amount due under this Agreement within thirty (30) days of its due date.

Upon termination of this Agreement for any reason, Customer shall promptly pay to Powernet all outstanding amounts due under this Agreement. Furthermore, the obligations contained in Sections 4, 5, 6, 7 and 10 of this Agreement shall survive the termination of this Agreement for any reason.

10. Performance of Services. Powernet shall perform the Services with due care and in a manner consistent with industry standards.

11. Indemnification. Each party shall defend, indemnify and hold harmless the other party and their respective directors, officers, employees, suppliers, licensors, contractors and agents from and against any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any kind, known or unknown, liquidated or unliquidated, including, without limitation, all reasonable costs and expenses incurred, including all reasonable litigation costs and attorneys' fees arising out of or relating to claims, complaints, actions, proceeding or suit of a third party that arise or relate in whole or part to the gross negligence or willful misconduct of the indemnifying party, its employees, agents, contractors, licensors or suppliers.

12. Disclaimer of Warranty. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9 OF THIS AGREEMENT, POWERNET MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, RELATED TO THE SERVICES OR ANY PRODUCTS SUPPLIED TO CLIENT IN THE PERFORMANCE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. Limitation of Liability. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR ELSEWHERE TO THE CONTRARY, IN NO EVENT SHALL POWERNET BE LIABLE TO CUSTOMER FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OR OTHERWISE RELATED TO POWERNET'S PERFORMANCE OF THE SERVICES. FURTHERMORE, IN NO EVENT SHALL POWERNET'S LIABILITY TO CUSTOMER FOR DAMAGES EXCEED THE TOTAL AMOUNT OF FEES PAID TO POWERNET FOR RENDERING THE SERVICES.

14. Relationship of Parties. The parties to this Agreement are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Nothing in this

Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Customer and either Powernet or any employee or agent of Powernet.

15. Force Majeure. Powernet shall not be responsible for delays in or nonperformance of the Services caused by forces beyond its reasonable control, including, without limitation, fire, acts of the public enemy, acts of God and failures of Powernet's third-party service providers or others.

16. Integration. Except for the Service Order, this Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters. In the event that any provision of the Service Order, any individual purchase order or similar instrument exchanged by the parties with respect to the Services conflicts with this Agreement, the terms of this Agreement shall govern.

17. 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 a written amendment executed by both parties.

18. Assignment. The parties acknowledge that this Agreement pertains to personal services. Accordingly, neither party may assign or transfer this Agreement or any of its rights and obligations hereunder without the prior written consent of the other party; provided, however, that Powernet may transfer its right to receive payments hereunder without Customer's consent.

19. Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to confer upon any other party any rights or remedies under this Agreement.

20. Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to principles of conflicts of laws. Venue for any actions under this Agreement shall be in state courts located in Hamilton County, Ohio, and each party irrevocably waives any objection to the jurisdiction and venue of such courts. 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 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.

21. 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.

Powernet's Contact

Network Service Director
8805 Governor's Hill Drive, Suite 250
Cincinnati, OH 45249
Fax: 877-813-7419
Email: Servicemanagement@powernetco.com

Powernet's Legal Contact

Legal Department
8805 Governors Hill Drive, Suite 250
Cincinnati, OH 45249
Fax: 513-645-4960
Email: legal@powernetco.com

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

23. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

24. 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.

25. Costs and Attorneys' Fee. If a proceeding is brought for the enforcement of this Agreement or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement or the Services, the prevailing party shall be entitled to recover reasonable attorneys' 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.