



Powernet Hosted IP PBX SIP Line Service Agreement

This is an agreement (“Agreement”) for Hosted IP PBX SIP Line Service 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 or Rental CPE and you agree to accept these terms and conditions with the Service and products or Rental CPE. 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. Emergency Services.

EMERGENCY 911 OR E911 MAY NOT FUNCTION AT YOUR LOCATION AT ALL TIMES. FOR EXAMPLE, EMERGENCY 911 OR E911 SERVICE WILL NOT FUNCTION WITH THE LOSS OF ELECTRICAL POWER OR INTERNET CONNECTIVITY. DUE TO THE LIMITATIONS OF 911 OR E911 DIALING, YOU SHOULD HAVE AN ALTERNATE MEANS OF ACCESSING 911 OR E911 SERVICES SUCH AS MAINTAINING A TELEPHONE CONNECTION THROUGH YOUR LOCAL EXCHANGE CARRIER. IN ADDITION, POWERNET WILL SEND ONLY THE CUSTOMER’S BILLING TELEPHONE NUMBER (“BTN”) OR THE TELEPHONE NUMBER ASSIGNED TO A PHYSICAL PORT ON THE PREMISE EQUIPMENT TO THE 911 OR E911 NETWORK FOR TRANSFER TO THE APPROPRIATE PUBLIC SAFETY ANSWERING POINT (“PSAP”). THEREFORE, ONLY THE PHYSICAL ADDRESS LISTED FOR THE BTN OR PHYSICAL PORT TELEPHONE NUMBER WILL BE DISPLAYED AT THE PSAP. POWERNET WILL NOT SEND THE STATION AUTOMATIC NUMBER IDENTIFICATION (“ANI”) OF THE TELEPHONE SET MAKING THE 911 OR E911 CALL UNLESS SPECIAL ARRANGEMENTS ARE MADE. IF THE CUSTOMER WISHES TO IDENTIFY THE INDIVIDUAL STATION FROM WHICH A 911 OR E911 CALL ORIGINATES, THE CUSTOMER MUST MAKE SPECIAL ARRANGEMENTS AND WILL INCUR ADDITIONAL CHARGES. IN THE CIRCUMSTANCE WHERE THE CUSTOMER OPTS NOT TO PROVIDE END USER LOCATION INFORMATION FOR INDIVIDUAL STATIONS, NEITHER POWERNET NOR ITS AFFILIATES HAS ANY LIABILITY WHATSOEVER FOR THE PROVISION OF END USER INFORMATION TO THE 911 OR E911 SYSTEM. ANY RELOCATION OF YOUR EQUIPMENT TO A PHYSICAL ADDRESS OTHER THAN THAT PROVIDED UPON SIGNUP, OR THE USE OF A NUMBER OUTSIDE OF YOUR NORMAL AREA CODE OR EXCHANGE MAY CAUSE INCORRECT E911 OR 911 INFORMATION TO BE PROVIDED TO YOUR LOCAL PSAP. UPON RECEIVING YOUR ADAPTER PLEASE LOG INTO YOUR CONTROL PANEL AND SET YOUR E911 ADDRESS. POWERNET IS NOT LIABLE FOR ANY CLAIM FOR DAMAGES WHATSOEVER, INCLUDING ANY CLAIM FOR INJURIES, DEATH OR LOSS TO PERSONS OR PROPERTY INCURRED BY ANY PERSON AS A RESULT OF ANY ACT OR OMISSION OF POWERNET EITHER IN CONNECTION WITH DEVELOPING, ADOPTING, IMPLEMENTING, MAINTAINING OR OPERATING ANY EMERGENCY 911 OR E911 SYSTEM OR IN THE IDENTIFICATION OF OR THE PROVISION TO ANY EMERGENCY 911 E911 SYSTEM OF THE TELEPHONE NUMBER, ADDRESS, NAME, LOCATION OR OTHER INFORMATION OF ANY PERSON ACCESSING OR ATTEMPTING TO ACCESS AN EMERGENCY 911 OR E911 OR SIMILAR SYSTEM. YOUR USE OF THE SERVICES AND SIGNATURE ON THE SERVICE ORDER IS YOUR ACKNOWLEDGEMENT THAT YOU ACCEPT THE SERVICES WITH THESE LIMITATIONS YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS POWERNET ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, INCLUDING 911 OR E911 DIALING OR ACCESS EMERGENCY SERVICE PERSONNEL.

2. Term.

The initial term is dependent on the package selected on the Service Orders. The initial term for the Services and any Rental CPE chosen by Customer shall commence on the date that Powernet makes the Services available (“Effective Date”). Customer’s obligation to pay for all Services and Rental CPE shall commence on the Effective Date. If an Additional Voice Line service is added after the Effective Date of the package, then the Additional Voice Line service will terminate at the same time as the package selected. 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 and any Rental CPE 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 for Services shall be those in effect as of the date that Powernet accepts the Service Order depending on the plan that you select. All charges, minimums, fees and restrictions of the plan you select are stated on your Service Order. The Unlimited Plan includes unlimited Local calls and unlimited Domestic Long Distance calling to the contiguous forty-eight (48) states. You agree that you will be charged on a per minute basis for all calls to Alaska, Hawaii and International destinations at our current rates which are subject to change immediately and without

notice to you. Please call us for our current Extended Domestic and International calling rates. If you choose a plan that does not include an unlimited amount of monthly domestic long distance minutes ("LD Minutes") then you will be charged the per minute charge listed on your Service Order for all domestic long distance minutes which are subject to change upon five (5) days written notice to you. The applicable continental U.S. long distance interstate rate is determined based upon the originating state of an outbound call or based upon the terminating state of a toll-free inbound call. Domestic intrastate rates are per state and are for state-wide termination within the same state. Domestic rates set forth in the Service Order or Attachments are shown in terms of full minutes and are billed in six (6) second increments with an initial six (6) second increment. The monthly charges for service do not include taxes, access or access related charges or rates for Extended Domestic or International calling. International rates are billed in six (6) second increments with an initial thirty (30) second increment. Calls for Mexico are billed in full minute (60 second) increments. All International and Extended Domestic rates are subject to change immediately and without notice to Customer. Service availability is subject to the availability of facilities to and in the particular countries. Powernet reserves the right to raise Customer's rates or terminate this Agreement upon thirty (30) days' notice if Powernet's underlying carrier raises Powernet's rates or terminates Powernet's Service.

- b. **Charge and Rate Conditions.** Powernet reserves the right, at any time upon fourteen (14) days' notice, to: (i) pass through to Customer, all or a portion of, any charges or surcharges, directly or indirectly, related to the action of any federal, state or governmental agency, or (ii) modify the rates, including any rate guarantees, and/or other terms and conditions to reflect the impact of such surcharges. Powernet may adjust its rates or charges, or impose additional rates and charges, in order to recover amounts it may be required by governmental or quasigovernmental authorities to collect from, or pay to others, to support statutory or regulatory programs during the course of the Term.
- c. **Taxes.** All charges for Service are net of Applicable Taxes (as defined below). Except for taxes based on Powernet's net income, Customer will be responsible for all applicable taxes 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 Services (collectively "Applicable Taxes").
- d. **Unauthorized Use.** Customer expressly acknowledges and agrees that it shall make payment in full to Powernet for all Services provided by Powernet pursuant to this Agreement and properly billed to Customer, whether authorized or not. Powernet reserves the right, but is not required, to take any and all action it deems appropriate to prevent or terminate any fraud or abuse in connection with the Services.
- e. **Billing Period.** Powernet will bill Customer for Monthly Recurring Charges in advance and for usage based Services in arrears on a monthly basis except 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.
- f. **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.
- g. **Payment.** All undisputed amounts stated on each invoice 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.
- h. **Billing Disputes.** Customer shall submit all disputes to Powernet within thirty (30) days of the date of the invoice in question. If Customer does not submit its dispute before the end of the thirty (30) day period, then Customer shall be deemed to have waived the right to dispute the invoice. Customer will submit all disputes via a written statement containing reasonably sufficient detail together with supporting documentation. Both parties will use good faith efforts to resolve the dispute within thirty (30) days from the Due Date of the invoice in question. If, at the end of the thirty (30) day period, or after Powernet makes a decision on the dispute whichever comes first, either party may file to immediately commence arbitration in accordance with Section 13e of this Agreement. Once Powernet makes a decision on the dispute the disputed amount shall be due or credited on the next invoice.
- i. **Late Payment.** If Customer fails to remit payment of all undisputed amounts 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.
- j. **Adjustments.** Powernet may make billing adjustments for Services for one hundred and eighty (180) days after the date of the invoice for Services provided by Powernet or for the greater of one hundred and eighty (180) days or any period allowed by law, government rule or regulation, or contract.
- k. **Missed Appointment.** If you miss an installation or service appointment for any reason, you must pay a missed appointment fee of one hundred fifty dollars (\$150.00).
- l. **Local Number Porting.** You may elect to port an existing Telephone Number ("TN") to Powernet for use with the Service. Powernet will support all valid requests and will cooperate with you to port any TNs in accordance with Powernet's standard operating procedures. You are responsible for presenting to Powernet all necessary and accurate Calling Service Records ("CSRs") in a form acceptable to Powernet in its sole discretion. You hereby represent and warrant to Powernet that you have all necessary rights and authority necessary to port any TNs and you hereby agree to indemnify, defend, and hold harmless Powernet, its Affiliates, and their officers, directors, employees and agents from and against any third party claim related to or arising out of any porting. You are liable for all charges for the Term, regardless of Powernet's ability to port Customer's existing TNs. If the porting of your TN has to be rescheduled you will be charged seventy-five dollars (\$75.00).
- m. **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.
- n. **Short Call Duration Charge.** Powernet reserves the right to charge all short duration calls (i.e. calls equal to or under six (6) seconds in length) a minimum of one-cent (\$0.01) per answered call if Powernet determines that Customer has excessive quantities (i.e. more than 10% of Customer's total calls) of such short duration.
- o. **NonRBOC Charge.** If during Customer's billing period, Customer's domestic long distance traffic originates or terminates at a location not listed on Powernet's OCN List found at www.powernetco.com in an amount that exceeds Powernet's average percentage of origination or termination traffic for the billing period, Powernet reserves the right to assess a four-cent (\$.04) per minute surcharge on all such excessive Customer originating and terminating minutes. Customer agrees to pay any such adjusted 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. Customer Warranties.

- a. No Resale of Services. Customer warrants that Customer will not resell any Services purchased hereunder. Customer acknowledges that all Services purchased pursuant to this Agreement are for retail purposes only and as such will be subject to taxes, fees, and assessments based on Customer's use as a retail end user.
- b. No Mass Call Events. Customer represents and warrants that Customer shall not use the Services pursuant to this Agreement:
 - i. To provide any mass call events or voice content related services including, without limitation, chat lines or party lines.
 - ii. In conjunction with the use of mass communications equipment of any kind including but not limited to computers.
 - iii. In conjunction with a call center, or use of the Service for call back, call sell, fax blasting, predictive dialing, telemarketing, debit card services or any other high volume applications.
- c. Acceptable Use Policy. Customer shall use the Services for lawful purposes and to conduct business. Customer is responsible for adhering to Powernet's Acceptable Use Policy ("AUP") while using the Service, the terms of which are made available for viewing over the Internet at www.powernetco.com and are incorporated by reference herein. Customer shall assure that its employees, agents, contractors, licensors, customers and suppliers also abide by Powernet's AUP. Customer agrees to defend, indemnify and hold harmless Powernet, its affiliates, and contractors from any and all liabilities, costs and expense, including reasonable attorneys' fees, arising from or related to use of the Service by Customer or Customer's Users. Any violation of the AUP or conduct that Powernet, in its reasonable discretion, believes may subject Powernet to civil or criminal litigation or liability, charges and/or damages will be considered to be a breach of this Agreement and for which Powernet may suspend service as outlined in this Agreement. If Powernet suspends the Service pursuant to this Section, Powernet may require a reinstatement fee in order to resume Service.
- d. Equipment.
 - i. Customer Responsibilities. Customer is responsible to provide an uninterrupted power supply including backup power or alternative service. Any power interruption will result in a loss of voice and data service including 911, E911 and similar emergency services. Powernet is not responsible for the installation, operation, maintenance, compatibility or performance of any third party service, software or hardware. If such third party hardware or software impairs operation of the Service, Customer remains liable for payment of all charges for the Service. Powernet shall not be held responsible or liable for any defects or failure in Customer's Service, computer, software, files, data, and peripherals or any other equipment or connectivity arising from or caused by any equipment or service which is not a part of Powernet's network.
 - ii. Customer Provided Equipment. If Customer is providing their own customer premises equipment then Customer will provide adequate facilities to house and operate any equipment necessary for the Services and provide Powernet with access to any existing equipment or communication demarcation points. Customer may be responsible for coordinating the connectivity of its voice and data customer premises equipment to the Service.
 - iii. Powernet Provided Equipment.
 1. During any term and thereafter unless you provide your own customer premises equipment or purchase the Rental CPE as provided below and until full payment of such purchase price and all interest due is made in full to Powernet, any Rental CPE provided by Powernet for provision of the Service ("Equipment") will remain the property of Powernet, its designee or a third party provider, notwithstanding that the Equipment, or any part thereof, may be affixed or attached to Customer's real property or any improvements thereon. Customer has no right or interest to the Equipment other than as provided herein and will hold the Equipment subject and subordinate to the rights of Powernet.
 2. Customer shall : (i) at its own expense, keep the Equipment free and clear of any claims, liens, and encumbrances of any kind; (ii) make no alterations or affix any additions or attachments to the Equipment, except as approved by Powernet in writing; (iii) not remove, alter or destroy any labels on the Equipment and will allow Powernet to inspect the Equipment at any time; (iv) take such action as is necessary to protect the Equipment including but not limited to, the provision of a secure, air-conditioned space to house, and sufficient electricity to run the Equipment, reasonable steps to protect the Equipment against theft, abuse or misuse, and reasonable steps to protect the Equipment against physical damage; (v) comply with all instructions and requirements of Powernet or manufacturer's manuals regarding the care and use of the Equipment; (vi) assure that the Equipment will be operated by competent and duly qualified personnel in compliance with all laws and regulations; and (vii) at Powernet's request, provide and maintain, at Customer's own expense, at all times following delivery of the Equipment "All-Risk" property insurance covering the Products for the full replacement value, naming Powernet or a third party provider designated by Powernet as a loss payee and Comprehensive General Liability insurance naming Powernet as an additional insured. Customer shall furnish to Powernet a certificate or other evidence satisfactory to Powernet that such insurance coverage is in effect on the Effective Date and on an annual basis thereafter. Each insurance policy shall contain a clause requiring the insurer to give to Powernet at least thirty (30) days prior written notice of any cancellation or non-renewal of any policy.
 3. Customer is responsible for maintaining the Equipment in good working order. No manufacturer's warranty is passed on to Customer. Customer is responsible to pay for all repairs and shipping. If the Equipment cannot be repaired or is lost or damaged ("Old Equipment"), Customer remains liable to pay the Old Equipment's total amount owed to Powernet. Powernet will replace the Old Equipment with new equipment ("New Equipment"). Customer shall pay for such new Equipment either by immediately paying for the New Equipment amount in full, executing a new amendment to the Agreement promising to pay the New Equipment amount over the remaining months of the current term of the Agreement or executing a new amendment to the Agreement promising to pay the New Equipment amount over the months of a new term of the Agreement.
 4. Customer further agrees to indemnify, defend, 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, or resulting from any Equipment loss. In no event will Equipment loss relieve Customer of the obligation to pay Powernet any amounts due under this Agreement.

iv. Return of Equipment.

1. Customer Responsibilities. Upon any termination of this Agreement, Service Order or Service, Customer will immediately return to Powernet all Powernet provided equipment, unless Customer is at the end of the Term then see Section 6d iv (3) below, in good working order as when it was delivered to Customer, ordinary wear and tear excepted and in such condition as to be acceptable to the manufacturer for regular maintenance without any remedial maintenance and any other property or information (including without limitation Confidential Information) obtained by Customer in connection with Customer's dealings with Powernet that Customer does not own.
2. Return During Any Term. If the Agreement, Service Order or Service is terminated by Powernet for cause or by Customer without cause prior to the expiration of Any Term, and Customer does not immediately return all such items as described in the Section 6d iv (1) above, Customer shall pay to Powernet promptly upon receipt of any invoice the Early Termination charges described in Section 2 of this Agreement in addition to the fair market value of the Equipment plus all costs incurred by Powernet in protecting its Confidential Information, in retrieving or attempting to retrieve the Equipment, in repairing or restoring the Equipment and in collection of such costs or other amounts due Powernet by Customer.
3. Return After Expiration of Any Term. At the expiration of any term, Customer may purchase the Equipment for the fair market value of one dollar (\$1.00), as long as Customer's account with Powernet is current, and Customer renews this Agreement on a services only basis. If Customer chooses not to purchase and not to renew this Agreement and Customer does not immediately return all such items as described in the Section 6d iv (1) above, Customer shall pay to Powernet promptly upon receipt of any invoice the fair market value of the Equipment plus all costs incurred by Powernet in protecting its Confidential Information, in retrieving or attempting to retrieve the Equipment, in repairing or restoring the Equipment and in collection of such costs or other amounts due Powernet by Customer.

e. Broadband Service.

- i. Customer Provided Broadband Service. The Service is not compatible with all broadband services. Some broadband providers provide modems that prevent the transmission of communication using this Service. Powernet disclaims any express or implied warranties regarding the compatibility of the Service with any particular broadband service.
 - ii. Powernet Provided WiMAX Network Service. Powernet's WiMAX Internet Access Service consists of: (i) a wireless, high-speed network connection between Customer's premises and Powernet's domestic Internet protocol network; and (ii) routing services, based upon the Transmission Control Protocol/Internet Protocol, which will afford Customer Internet connectivity. With this access in place, Powernet is able to provide Customer with Voice Over IP Services. Powernet will provide Customer for purchase or rent an antenna and router to connect Customer to the Powernet wireless network for Customer to have internet access. Customer may be required to purchase additional equipment to meet Customer's request or specifications. In order to provide the Services, Powernet must have access to your building to complete a site survey and to install equipment. Powernet has the right to reject any Customer location based on the findings from the site survey. Customer is responsible for acquiring any necessary permission for equipment installation and shall provide access to Powernet for installation.
- f. Security Measures. Customer shall be solely 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.
- g. Unpermitted Use of Service. Customer shall not alter the firmware, software, or any electronic data stored on the Equipment without the express written consent of Powernet. Customer shall not change the electronic serial number or equipment identifier or perform a factory reset of the Equipment without our prior written consent. Customer shall not attempt to hack or otherwise disrupt the Services or make use of the Services in any way that is inconsistent with its intended purpose. Customer shall contact Powernet immediately if the Equipment is stolen or if Customer becomes aware at any time that Customer's Service is being stolen, fraudulently used or otherwise being used in an unauthorized manner. Until such time as Powernet receives notice of the theft, fraudulent use or unauthorized use, Customer will be liable for all use of the Service using the Equipment stolen from Customer and all stolen, fraudulent or unauthorized use of the Service. Neither you nor your Authorized Users may use the Services for any unlawful purpose, or in such a way as to interfere with the Service by others. You must not permit or assist others to misuse, abuse or fraudulently use the Service. Abuse shall also include if your use of the Unlimited Plan in any one month is unreasonable. You agree that such abuse will allow Powernet upon notice to you, to move your account to another plan and charge you a per-minute charge for all Long Distance calling.
- h. Travel and Use of Service and Equipment Outside of the United States. Powernet offers and supports services only in the United States and certain other countries. The Service is designed to work generally with unencumbered high-speed internet connections. If the high-speed internet connection Customer is using is not within a Powernet service area, and/or Customer's ISP or broadband provider places restrictions on the usage of the Service, Powernet does not represent or warrant that use of the Service by Customer is permitted by such other jurisdiction or by any ISP or broadband provider. Customer is solely responsible for any violations of local laws and regulations or violations of ISP and broadband provider terms of service resulting from such use.
- i. Letter of Authorization ("LOA"). Customer shall complete and maintain an accurate LOA that is true, and does not contain any misleading statements and is not missing any information the absence of which would make the information provided by or statements made by Customer in the LOA misleading.
- j. No Third Party Calls. Customer shall not send any calls that would incur any third party charges including but not limited to 800 collect, third party, 900/976 or credit card calls.
- k. Breach of Customer Warranties. Any breach of any of Customer's warranties pursuant to this Section 6 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.

7. Hosting with Technical Support.

- a. Powernet shall provide technical support for Customer's Service.

- i. Powernet shall provide technical support for the Powernet provided voice services only. Powernet is not responsible for providing technical support for any of Customer's Third Party equipment or broadband. Powernet will diagnose Customer problems using reasonable efforts to provide solutions to Customer during the term of this Agreement.
- ii. Technical support will be provided to Customer on an as needed basis.
- iii. The Parties agree to keep each other informed regarding any issues with Customer's equipment and Services and agree to assist each other in investigating and resolving any voice issues.
- iv. Customer shall notify Powernet of any events affecting Customer's business that may hinder Powernet's ability to provide technical support services.
- v. Technical support will be provided between the hours of 8:00 a.m. and 5:00 p.m. EST Monday through Friday except on Powernet holidays. Any support needed on hours and days not listed above will only be provided on an emergency basis as determined by Powernet. Powernet will use commercially reasonable efforts to begin technical support within twenty-four (24) hours of receiving a request from Customer.
- vi. Powernet will use commercially reasonable efforts in providing the technical support to Customer. Any issues of quality of the technical support provided by Powernet will not be considered a breach of this Agreement.

8. Number Transfer on Termination.

Upon termination of the Services, Powernet agrees to release Customer's new service provider the telephone number(s) that Customer used in connection with the Service if Customer's: (1) New service provider is able to accept such number(s); (2) Account has been properly terminated; (3) Account is completely current, including payment for any Early Termination Fees; (4) Equipment has been returned in good order; and (5) Transfer was requested upon terminating its account.

9. Relocation of Service.

If Customer requests to relocate the Service to a new location, then Customer will request such move in writing at least six (6) weeks in advance of the changeover date. If such new location is within Powernet's service area, then Customer and Powernet agree to enter into a new contract for the new location of length no less than the original Service Period. Such new contract may include additional or different installation, recurring and other charges and fees, and in addition to the foregoing, Powernet may assess, and Customer will promptly pay, a relocation fee for each time Customer changes Service location. If such new location is not within Powernet's service area or Service ceases at the prior location and a new agreement for the new location is not executed by the parties, then the Agreement will be deemed terminated by Customer and Early Termination Charges will apply.

10. Dedicated Internet Access.

If Customer purchases Dedicated Internet Access Service or Internet Access via the WiMAX Network from Powernet some or all of the following applies:

- a. Flat Rate Ports. Pricing is per port and billed in monthly recurring charges. Customer may choose a flat rate bandwidth port or a partial port with a minimum bandwidth. Customer shall pay the MRC associated with the flat rate port or the minimum bandwidth port monthly. Customer may not decrease the applicable pricing bandwidth (e.g. decrease from DS-3 to DS-1, etc.) to a lower Bandwidth during the Service Term.
- b. Rate Change. Powernet reserves the right, to charge its then current rates if Customer orders any additional ports after the Effective Date of this Agreement.
- c. Disclaimer of Warranties. Customer assumes total responsibility for use of the service and the internet and accesses the same at its own risk. Powernet exercises no control over and has no responsibility whatsoever for the content accessible or actions taken on the internet and Powernet expressly disclaims any responsibility for such content or actions. Except as specifically set forth herein, the service and related software provided by Powernet, if any, are provided without warranties of any kind, either express or implied, including but not limited to warranties of title, noninfringement, merchantability or fitness for a particular purpose. No advice or information given by Powernet, its affiliates, contractors, agents or their respective employees shall create a warranty.
- d. Customer Responsibilities. Customer shall be solely responsible for any costs associated with Customer Premises Equipment ("CPE") which, if requested by Customer, may be provided by Powernet.
- e. IP Addresses. Customer agrees that any IP address assignments and allocations from Powernet are based on the address lending policy of American Registry for Internet Numbers and applicable agencies. It is an express condition of this Agreement and the loan of such IP addresses that such assignments and allocations shall terminate and the IP addresses be returned to Powernet when this Agreement and/or any applicable Service Order is terminated. Powernet reserves the right to recover any address space due to inadequate utilization or an AUP violation.
- f. Domain Name Service. Powernet at Customer's request will provide Customer with primary domain name service.
 - i. Selection of Domain Name. Customer represents that, to the best of the Customer's knowledge and belief, neither the registration of the domain name nor the manner in which it is directly or indirectly used infringes the legal rights of a third party and that the domain name is not being registered for any unlawful purpose.
 - ii. No Guaranty. Registration or reservation of your chosen domain name does not confer immunity from objection to either the registration, reservation, or use of the domain name.
 - iii. Powernet's Right to Refuse Registration. Powernet in its sole discretion may refuse to register or reserve Customer's chosen domain name or register Customer for other Services. Powernet shall not be liable to Customer for loss or damages that may result from Powernet's refusal to register, reserve, or delete Customer's domain name or register Customer for other Services.
 - iv. Disclosure and Use of Registration Information. Powernet will make domain name registration information available to the Internet Corporation for Assigned Names and Numbers ("ICANN"), to the registry administrators, and to other third parties as ICANN and applicable laws may require or permit. Powernet may also make publicly available, or directly available to third party vendors, some, or all, of the domain name registration information Customer provides, as required or permitted by ICANN and the applicable laws. Customer hereby consents to any and all such disclosures and use of, and guidelines, limits and restrictions on disclosure or use of, information provided by Customer in connection with the registration of a domain name (including any updates to such information), whether during or after the term of Customer's registration of the domain name. Customer hereby irrevocably waives any and all claims and causes of action Customer may have arising from such disclosure or use of Customer domain name registration information. Powernet will take reasonable precautions to protect the information Powernet obtains from Customer from loss, misuse, unauthorized access or disclosure, alteration or destruction of that information.

11. 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. POWERNET MAKES NO WARRANTY WITH RESPECT TO THE SERVICE, EQUIPMENT OR THE SERVICE OR EQUIPMENT'S PERFORMANCE UNDER THIS AGREEMENT. POWERNET DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICE OR EQUIPMENT.

PUBLISHED DIRECTORY LIABILITY. POWERNET IS NOT LIABLE FOR DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, AS A RESULT OF (I) ANY ACT, OMISSION OR FAILURE TO LIST CUSTOMER IN CONNECTION WITH LISTING CUSTOMER'S INFORMATION IN ANY PUBLISHED DIRECTORY; (II) ANY ERRORS OR OMISSIONS IN CUSTOMER'S INFORMATION LISTED IN ANY PUBLISHED DIRECTORY (CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF SUCH INFORMATION); AND (III) ANY ACT, OMISSION OR FAILURE TO PROVIDE CUSTOMER A CERTAIN VANITY OR TOLL-FREE NUMBER – EVEN IF POWERNET HAS INFORMED CUSTOMER THAT THE DESIRED NUMBER IS AVAILABLE.

POWERNET DISCLAIMER FOR CONTENT. USE OF POWERNET'S VOICE AND DATA SERVICE IS SOLELY AT CUSTOMER'S OWN RISK. POWERNET EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT 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) OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE OR THAT DEFECTS IN THE SERVICE WILL BE CORRECTED. ANY MATERIAL AND/OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPUTER SYSTEMS OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL AND/OR DATA. POWERNET MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICE OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. 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.

SECURITY AND OTHER ALARM SYSTEMS. THE SERVICE MAY NOT BE COMPATIBLE WITH CUSTOMER'S SECURITY AND FIRE ALARM SYSTEMS. POWERNET STRONGLY RECOMMENDS THAT CUSTOMER MAINTAINS A TELEPHONE CONNECTION THROUGH CUSTOMER'S LOCAL EXCHANGE CARRIER IN ORDER TO USE ANY ALARM MONITORING FUNCTIONS. YOU ARE RESPONSIBLE FOR CONTACTING THE ALARM MONITORING COMPANY REGARDING YOUR ALARM SERVICE. YOU SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS POWERNET, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO YOU IN CONNECTION WITH THE SERVICE, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY RELATING TO THE ABSENCE, FAILURE OR OUTAGE OF THE SERVICE, INCLUDING FAILURE OR PROBLEMS WITH CUSTOMER'S SECURITY AND FIRE ALARM SYSTEMS.

12. 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 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 or from the violation of Powernet's AUP.

13. 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.

Notwithstanding the foregoing, Powernet may disclose Customer Proprietary Network Information to any agent of Customer to initiate or provide Services and bill or collect for the Services.
- 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.

For service and account management issues:

For legal issues:

<u>Powernet's Contact</u>	<u>Legal Contact</u>
Name: Customer Relationship Manager	Name: General Counsel
Address: 8805 Governor's Hill Drive, Suite 250	Address: 8805 Governor's Hill Drive, Suite 250
Cincinnati, OH 45249	Cincinnati, OH 45249
Facsimile: 513-275-0020	Facsimile: 513-645-4960

- e. Arbitration. The Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Therefore, except for action seeking a temporary restraining order or an injunction relating to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

At the written request of either Party, each Party will appoint a knowledgeable representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The representatives shall have the discretion to determine the location, format, frequency and duration of their negotiations, and to utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. All discussions and correspondence among the representatives shall be treated as confidential information developed for the purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the agreement of the Parties.

If the negotiations do not resolve the dispute within forty-five (45) days of the initial written request, the dispute shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association (“AAA”). The parties acknowledge that this Agreement is made pursuant to a transaction in interstate commerce, and that any arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. sec. 1, et seq. Any court with jurisdiction may enter judgment upon the award rendered by the arbitrator. The arbitration will be held in Hamilton County, Ohio. The Parties agree that the arbitration shall proceed *ex-parte* in the event that a Party, after being duly notified refuses to participate in the arbitration. The prevailing party shall be entitled to reasonable costs and attorney’s fees.

- f. 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.
- g. Interpretation. No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of this Agreement.
- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. Severability. If any term or provision of this Agreement shall, to any extent, 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.
- m. 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.
- n. 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.