



## SmartRing Terms and Conditions

This is an agreement ("Agreement") for SmartRing and related services and/or features ("Service") between you and PNG Telecommunications, Inc. d/b/a Powernet ("Powernet"). The words "we", "us", or "our" refers to Powernet. The words "you" "your" or "Customer" refers to the person who is completing this Agreement. This Agreement explains the terms and conditions upon which we agree to provide you Service or products and you agree to accept these terms and conditions with the Service or products provided by us. You represent that you are at least eighteen (18) years of age and have the legal capacity to accept this Agreement.

### 1. EMERGENCY SERVICES.

**EMERGENCY 911 SERVICES WILL NOT BE PROVIDED WITH THE SMARTRING AUTOMATED ATTENDANT SERVICE. SMARTRING TELEPHONE NUMBERS CAN ACCOMODATE INBOUND CALLING ONLY. ALL CALLS MADE TO 911 MUST BE DIALED BY AN AVAILABLE PHONE WITHIN THE CALLING PARTY'S SURROUNDINGS. 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 OR 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 ACCEPTANCE OF THESE TERMS AND CONDITIONS WILL BE YOUR ACKNOWLEDGMENT THAT POWERNET HAS ADVISED YOU OF THESE LIMITATIONS AND 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 and Changes to the Agreement.** You agree that your obligation to pay for all Services shall commence on the date that Powernet makes the Services available. Since there is no service term, you will continue on a month-to-month basis. **You agree that we may make changes to these Terms and Conditions at any time upon thirty (30) days written notice to you.** You agree that if you use the Service after the effective date of the changes as stated in the notice, then you have accepted the new Terms and Conditions of the Service. If you do not accept the changes, then do not use the Service after the effective date and inform us in writing at the address in Section 15 or call us at 1-877-599-3087 to cancel your Service.

3. **Activating Your Service.** Prior to activating your Service, you agree that we may and verify your identity. You agree to provide us with accurate billing information, including your name, home address and telephone number. You agree to report any changes to this information to us within thirty (30) days of any change. You agree that you may be required to make a prepayment on your account if payment history becomes unsatisfactory to us. You agree that if you fail to provide the requested prepayment within two (2) business days' of our request, you will be deemed in breach of your obligations under this Agreement and that shall entitle us to suspend or terminate your Service immediately and without notice pursuant to Section 10. Please see below Section 5(b) First Bill.

### 4. Charges and Rates.

a. **Charges for Service.** You agree to pay all the charges for your Services. Rates and charges for those Services shall be those in effect as of the date that Powernet accepts your order for the plan that you chose. You agree that your monthly charges are subject to change upon thirty (30) days written notice to you. You have agreed to the following service:

b. **SmartRing.** SmartRing is an inbound only automated attendant telephone service that provides an automated means of directing incoming calls to the appropriate telephone number.

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a. **Taxes and Surcharges.** Your monthly charges do not include taxes, surcharges, access or access related charges. You agree to pay all charges for federal, state, and where applicable local taxes we bill you. You also agree to pay any surcharges, access fees, governmental fees and Regulatory fees that we bill you. These charges are subject to change immediately and without notice. You agree to pay a Compliance Cost Recovery Fee which is designed to help us recover costs associated with complying with certain federal and state regulations. The Compliance Cost Recovery Fee is subject to change upon thirty (30) days written notice and is not a government mandated tax or surcharge.

### 5. Billing.

a. **Bill Cycle.** You agree that you will be billed monthly, generally beginning when your Service began. Billing cycles may change from time to time without notice. Monthly charges and fees are usually invoiced one billing cycle in advance. Other charges such as any international usage charges are generally invoiced soon after they are incurred.

b. **Bills.** Your first bill, among other things, may contain a prorated amount for the monthly charge for the current month in addition to the charges you will see on each monthly bill that include the following:

- i. The monthly charge for the next bill cycle;
- ii. Any applicable taxes, fees and surcharges;
- iii. A fee for porting your local telephone number.

- c. **Payment.** You agree to pay all monthly fees, taxes and surcharges we bill you, even if you were not the user of your phone and did not authorize its use. You agree that payment is due in full in U.S. dollars by the due date as stated on your bill. If you agree to pay your bill by an automatic withdrawal from a banking institution or credit account, you agree that we may request payment from the account for the full invoice amount without additional authorization from you. You agree that an additional fee may be imposed for certain methods of payment. You agree if we do not receive your payment in full by the due date, we may charge you a late fee of the lesser of one and one half percent (1 ½%) per month or the maximum fee allowed by law of the unpaid balance.
- d. **Nonpayment and Suspension.** You agree that if your bill is not paid in full by the due date, we may immediately and without notice suspend or terminate your Service pursuant to Section 10.
- e. **Disputed charges.** Please contact us at 1-877-599-3087 if you believe that you have been charged incorrectly. You agree to submit all disputes to us within thirty (30) days of the invoice date of the invoice in question. You agree that if you do not submit your dispute before the end of the thirty (30) day period, then you shall be deemed to have waived the right to dispute the invoice. You agree to submit all disputes via a written statement containing reasonably sufficient detail together with supporting documentation to the address in Section 15. The 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, the dispute is not resolved, either party may commence arbitration in accordance with Section 16 of this Agreement.
- f. **Adjustments.** You agree that we may make billing adjustments for Services for the greater of one hundred and eighty (180) days after the date of the invoice or the date an unbilled charge was provided by Powernet or any period allowed by law, government rule or regulation.

6. **Number Porting.** You may elect to port an existing Telephone Number ("TN") to us for use with the Service. We will support all valid requests and will cooperate with you to port any TNs in accordance with our standard operating procedures. You agree to pay a fee to us for porting your number which will appear on your first bill. Please see above Section 5(b) First Bill. You hereby represent and warrant to us 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.

7. **Use of Service.**

- a. **No Abuse.** You agree not to use our Service in an abusive, unlawful or fraudulent manner. You agree not to resell or lease any Services purchased hereunder. You agree to be responsible for all use of our Services and all charges including but not limited to the use by children or minors. You agree that if we suspect that you are using the Service in an abusive, unlawful or fraudulent manner, we may immediately and without notice suspend or terminate your Service pursuant to Section 10.
- b. **Acceptable Use Policy.** You agree to be 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](http://www.powernetco.com).
- c. **Breach of Section 7 - Use of Service Warranties.** You agree that any breach by you of this Section 7's Terms and Conditions will constitute a material breach of this Agreement and Powernet may suspend or terminate your Service immediately and without notice pursuant to Section 10. If you breach any of this Section 7's Terms and Conditions, you agree to be solely liable for and will indemnify, defend and hold Powernet and its respective officers, directors, employees, contractors and agents 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.

8. **Number Transfer on Termination.** Upon termination of the Services, Powernet agrees to release to your new service provider the telephone number(s) that you used in connection with the Service as long as your (1) New service provider is able to accept such number(s); (2) Account has been properly terminated; (3) Account is completely current; and (4) Request for the transfer was made upon terminating your account.

9. **Termination of Service.** You agree we may terminate your Service as described in Sections 3, 5(d), 7(a), and 7(i) in this Agreement immediately and without notice to you (i.e. if we suspect fraud, abuse or unlawful activity or nonpayment of charges when due). You agree we may terminate your Service and/or suspend your Service for any other breach of this Agreement or for any other business or governmental reason with notice to you. You may cancel your Service at any time with prior notice to us. To notify us of your cancellation, please call us at 1-877-599-3087. You understand that until you notify us by calling us at the number above, your Service will not be terminated and you will continue to be responsible to pay for continuing charges. If any Service is terminated or cancelled for any reason before the end of your current billing cycle, you agree we will prorate the monthly charge and usage charges to the date of termination.

10. **Limitation of Liability; Disclaimer of Warranties.** YOU AGREE THAT IN THE EVENT OF ANY BREACH OF THESE TERMS AND CONDITIONS OR ANY FAILURE OF THE SERVICES WHATSOEVER, NEITHER POWERNET NOR ANY OF POWERNET'S SUPPLIERS SHALL BE LIABLE TO YOU 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. YOU AGREE THAT POWERNET MAKES NO WARRANTY WITH RESPECT TO THE SERVICE OR ITS PERFORMANCE UNDER THESE TERMS AND CONDITIONS. YOU UNDERSTAND THAT POWERNET DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU UNDERSTAND THAT NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICE OR EQUIPMENT. YOU UNDERSTAND THAT WE DO NOT PROMISE ERROR-FREE OR UNINTERRUPTED SERVICES AND YOU AGREE TO HOLD US HARMLESS FOR ALL SUCH PROBLEMS.

- a. **Limitations.** You agree that we are not liable for any damages arising out of or in connection with any:
  - i. Act or omission by you, another person or company;
  - ii. Failing to provide Services or problems with your Services or equipment;
  - iii. Accidents or any health-related claims allegedly arising from the use of the Services or any equipment; or
  - iv. Failure or interruption in attempting to access emergency services from the provided equipment or our Service.
- b. **Force Majeure.** You agree that Powernet shall not be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond Powernet's reasonable control.
- c. **Damages.** If we are found to be liable to you for damages, you agree that any such damages shall not exceed the pro-rated monthly recurring charge for your Services during the affected period.

**12. SECURITY AND OTHER ALARM SYSTEMS. YOU AGREE THAT THE SERVICE MAY NOT BE COMPATIBLE WITH YOUR SECURITY AND FIRE ALARM SYSTEMS. YOU UNDERSTAND THAT POWERNET STRONGLY RECOMMENDS THAT YOU MAINTAIN A TELEPHONE CONNECTION THROUGH YOUR LOCAL EXCHANGE CARRIER IN ORDER TO USE ANY ALARM MONITORING FUNCTIONS. YOU AGREE THAT YOU ARE RESPONSIBLE FOR CONTACTING THE ALARM MONITORING COMPANY REGARDING YOUR ALARM SERVICE. YOU AGREE TO 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 YOUR SECURITY AND FIRE ALARM SYSTEMS.**

**13. Customer Proprietary Network Information.** Powernet may disclose Customer Proprietary Network Information to any agent of Customer to initiate or provide Services and bill or collect for the Services.

**14. Integration.** You agree that these Terms and Conditions and any Orders or Attachments 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.

**15. Indemnification.** You agree to 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 arises out of any violation of this Agreement by you.

**16. Notices.** You agree that all notices to be sent to you pursuant to this Agreement shall be in writing and sent by electronic mail ("email") to the email address associated with your account (if available), and/or US mail or private courier. You agree that any email notice shall be deemed delivered when sent and that notices sent via U.S. mail or courier shall be deemed delivered two (2) days after the date sent. You agree that all written correspondence to Powernet should be directed to Customer Service, Powernet, 8805 Governor's Hill Drive, Suite 250, Cincinnati, OH 45249.

**17. Arbitration.** The parties desire to resolve disputes arising out of or relating to this Agreement without litigation.

Therefore, except for an 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.

All discussions and correspondence among you and us 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.

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. You agree that the arbitration shall be administered by the American Arbitration Association ("AAA"). You may contact the AAA by telephone at 1-800-778-7879, by email at [Websiteemail@adr.org](mailto:Websiteemail@adr.org), or by mail at 335 Madison Avenue, Floor 10, New York, New York 10017. Any court with jurisdiction may enter judgment upon the award rendered by the arbitrator. The parties agree that any 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 parties agree that the prevailing party shall be entitled to reasonable costs and attorney's fees. Notwithstanding the above, we each agree that if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due amounts and any interest or cost of collection permitted by law or the Agreement.

Notwithstanding the above, **YOU UNDERSTAND THAT YOU MAY CHOOSE TO PURSUE YOUR CLAIM IN COURT AND NOT BY ARBITRATION if: (a) your claim qualifies, you may initiate proceedings in small claim court; or (b) YOU OPT OUT OF THESE ARBITRATION PROCEDURES WITHIN THIRTY (30) DAYS FROM THE DATE YOU ACTIVATED THAT PARTICULAR SERVICE ("Opt Out Deadline").** You may opt out of these arbitration procedures by calling 1-877-599-3087. You agree that any opt-out received after the Opt Out Deadline will not be valid and you must pursue your claim in arbitration or small claims court.

**18. Waiver and Amendment.** You agree that the failure of Powernet to enforce any provision hereof on one or more occasions shall not constitute the permanent waiver of such provision.

**19. Choice of Law.** You agree that 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. You 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. You hereby consent to the jurisdiction and venue of such court and waive any objection to such jurisdiction and venue. If Powernet sends your

account to an outside collection agency or institutes collection proceedings against you, Powernet has the right to charge you for any collection fees.

**20. Survival.** You agree that 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, governing law and forum selection.

**21. Severability.** You agree that 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.

**22. Assignment.** You agree that Powernet may assign its rights and duties at any time to any party without notice to you. You agree that you may not assign this Agreement without the prior written consent of Powernet.

**23. Costs and Attorneys' Fees.** You agree that 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 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.

**24. CLASS ACTION WAIVER. WE EACH AGREE THAT ANY DISPUTE RESOLUTION PROCEEDING, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION.** You agree that if a court or arbitrator determines in an action between you and us that this waiver is unenforceable, the arbitration agreement will be void as to you. If you chose to pursue your claim in court by opting out of the arbitration provision as specified above, this Class Action Waiver provision will not apply to you. You agree that neither you, nor any other customer, can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt out requirements above.

**25. JURY TRIAL WAIVER.** If a claim proceeds in court rather than through arbitration, **WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.**