



CYBER ATTACK PROTECTION PLAN SERVICES AGREEMENT

This Cyber Attack Protection Plan Services Agreement is made by and between PNG Telecommunications, Inc. d/b/a Powernet ("Powernet") Ohio corporation with principal place of business located at 8805 Governor's Hill Drive, Suite 250, Cincinnati, Ohio 45249 and Customer. Powernet reserves the right to change these terms and conditions from time to time. Posting of the updated Master Services Agreement will constitute notice to Customer of any such changes. Changes will be effective upon posting. Customer remains responsible for regularly reviewing these terms and conditions. Customer's continued use of the Services after the date of such changes constitutes Customer's acceptance of and agreement to such changes.

1. Agreement

The agreement between the parties ("Agreement") consists of this Master Services Agreement ("MSA"), any schedules describing offered Services ("Service Schedule"), any orders for Services submitted by Customer and accepted by Powernet ("Service Order(s)") and any documents incorporated by reference herein. If there is a conflict between the MSA, Schedule or a Service Order, the document that shall control will be in the following order: 1) Service Order, 2) Schedule 3) MSA.

- A. Services. Services offered by Powernet to Customer for purchase are described in the Service Schedules and/or Service Orders executed by both parties (the "Services"). The Services may consist of services provided directly by Powernet and also of services procured by Powernet from third party suppliers.

2. Description of Service: Powernet will provide a monthly external vulnerability scanning for business customers. (i) The scans look for security holes or misconfigurations on the customers' networks to proactively find changes or weaknesses in their ever-changing network environment. (ii) Remediation is not included, but can be provided by Powernet and sold in addition to this product. (iii) In addition to the monthly scanning service, this product provides business customers a membership to participate in the North American Data Security Risk Purchasing Group for Cyber Liability insurance. The Enterprise Cyber Liability Program protects businesses for the cost of an actual or suspected violation of privacy regulation due to a security breach that results in the unauthorized release of protected personal information which is any private, non public information of any kind in the merchants care, custody or control.

- A. Scope. Powernet shall provide Cyber Attack Protection Plan (CAPP) service powered by Guard Street Partners, LLC, an ongoing external vulnerability scanning service for business customers with a participation in Enterprise Cyber Liability Program through North American Data Security Risk Purchasing Group for insurance.. CAPP Service ("Services") powered by GuardStreet, is designed to protect the small to midsize business proactively and provide reactive assistance and insurance to Customer if needed as described in this Schedule and at the rates and terms set forth in this Schedule and Service Orders and Attachments.

3. Term

This MSA shall become effective on the date a Service Order is fully executed by both Powernet and Customer and shall continue in full force and effect until the last Service Order's term expires.

- A. Service Schedule and Service Order Term. Notwithstanding anything else in this MSA, each Service Schedule or Service Order placed under this MSA shall have its own term and the terms of this MSA shall continue to govern the parties duties and rights with respect to such Service Schedule or Service Order until the expiration of its term or any succeeding term or unless the Service Schedule or Service Order is terminated as permitted by this MSA.

4. Ordering Service

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. Powernet will provide Managed Services for service(s)/device(s) specified on customer proposal and/or Scope of Work.

- A. 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 MSA or any Service Schedule 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.
- B. Cancellation Fee. If Customer cancels any Service Order or this Agreement after the Service has been ordered but prior to Powernet notifying Customer that Service is available, Customer shall pay to Powernet all third party supplier costs including but not limited to pre-engineering costs, installation costs and cancellation fees that are charged to Powernet due to Customer's cancellation.
- C. Provisioning Service: Service is available immediately to the Customer once a (9) nine digit Membership ID is created and services are established within the Guard Street organization. Cyber liability insurance coverage, through North American Data Security Risk Purchasing Group is available after thirty (30) days of first payment and account creation.
 - a. Powernet will submit enrollment information to Guard Street on behalf of the Customer. Guard Street will validate the enrollment information and submit a nine (9) digit Membership ID to Powernet for each associated to Customer. All enrollment information will be sent to Customer with the approval from Guard Street into the program by Powernet, as part of the Welcome Package.
 - i. Guard Street services are only available in the United States.

5. \$100,000 Enterprise Cyber Liability Program. Customer will receive a Client membership and be able to participate in the North American Data Security Risk Purchasing Group which includes the coverage below. The Enterprise Cyber Liability Program protects businesses for the cost of an actual or suspected violation of a privacy regulation due to a security breach that results in the unauthorized release of protected personal information which is any private, non-public information of any kind in the merchants care, custody or control. The Enterprise Cyber Liability Program is facilitated through the North American Data Security RPG (named insured on master policy), a risk purchasing group which is registered in all fifty (50) states and the District of Columbia via Guard Street. The master policy is underwritten by AXIS Insurance Company, an A+ rated insurance carrier by AM Best.

- A. Powernet has no involvement with any claims, questions and or issues with this insurance policy. This is supported and provided solely by North American Data Security Risk Purchasing Group. Located at <http://www.royalgroupservices.com/ecl/>.

1.1. POLICY DETAILS

- 1.1.1. Limit of Liability: \$100,000 (annual aggregate)
- 1.1.2. Master policy - admitted - claims made policy form
- 1.1.3. No aggregate limit on master policy
- 1.1.4. Zero retention
- 1.1.5. Coverage territory is worldwide
- 1.1.6. Claim reporting requirement - within 60 days upon becoming aware of a suspected or actual breach
- 1.1.7. Ineligible businesses: -Businesses that process greater than 6mm payment card transactions annually with a card brand (i.e. VISA) or; a business that has experienced a breach of payment card data, or; deemed Level 1 by a card brand

1.1.8. COVERAGE DETAILS

- 1.1.8.1. Coverage begins thirty (30) days from customer enrollment, unless an API is established with the provider and in that case, coverage will begin as soon as the provider receives the customer information.
- 1.1.8.2. Civil proceeding or investigation including requests for information for an actual or alleged violation of any privacy regulation (PII data) brought on behalf of any federal, state, or foreign governmental agency including:
 - Defense & settlement or judgment
 - Regulatory fines & penalties (including PCI)
 - Mandatory forensic examination
- 1.1.8.3. PCI re-certification services to re-certify compliance with PCI Security Standards
- 1.1.8.4. Crisis management and fraud prevention expense: Including: Call Center; Notification; Forensics; Credit Monitoring; Public Relations and Associated legal expenses
- 1.1.8.5. Sub-limits apply: Ransomware - \$10,000; Telecommunications Theft - \$10,000 ; Social Engineering Fraud - \$10,000; Credit monitoring ;Theft Coverage - \$100,000.

- 1.2. The specific terms, conditions, limitations and exclusions that will govern in the event of loss can be viewed at: <http://www.royalgroupservices.com/ecl/>. Customers may print their Certificate of Insurance using their customer number and receive access to claim reporting.
- 1.3. A claim or potential claim must be reported as soon as practicable but within sixty days (60) of first knowledge. The customer will provide notice of a claim as indicated in the web portal (<http://www.royalgroupservices.com/ecl/>) in addition to required notices under the applicable insurance policy. If a timely report is not made to the insurance company through the portal, then Guard Street's benefit provider reserves the right not to provide certain reimbursement under the Program.
- 1.4. Without cause upon thirty (30) days written notice to the Customer, Powernet via Guard Street may remove the Enterprise Cyber Liability Program should a notification be received from North American Data Security Risk Purchasing Group to terminate the program.

6. Charges for Service

All charges for Services shall be those in effect as of the date that Powernet accepts the Service Order. Customer is liable for all charges (recurring and nonrecurring) for Services provided to Customer both by Powernet and by third parties. Customer shall also be liable for payment of charges (ancillary fees, administrative costs and other miscellaneous charges) reasonably incurred by Powernet (including from third parties) to provide Service to Customer but not specified in a Service Order or Service Schedule including, but not limited to (i) charges due to Customer's request to expedite Service availability to a date earlier than the date in the Service Order; (ii) charges due to Customer's request to change an installation date to a date other in the Service Order; (iii) changes to the Service Order after Powernet acceptance; (iv) expense incurred for Service redesign or modification; (v) reinstallation charges following any suspension of Service by Powernet; (vi) disconnection charges; (vii) customer premises equipment.

- A. Charge Conditions. All charges are based on the following conditions and reservation of rights by Powernet:
 - a. Customer acknowledges that GuardStreet may change the Cyber Attack Protection Plan Service, at its discretion at any time. Such change may interrupt Customers CAPP Service.
 - b. The Services may only be used for Customer or Authorized User communications.
 - c. 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, Powernet may adjust its charges, or impose additional charges, in order to recover amounts it may be required by governmental or quasi governmental authorities to collect from, or pay to others, to support statutory or regulatory programs during the course of the Agreement.
- B. 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"). If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Powernet with a valid exemption certificate (in a form reasonably acceptable to Powernet) and Powernet will give effect to any such exemption prospectively. Customer agrees to indemnify, defend and hold harmless Powernet from any liability or expense associated with Applicable Taxes.

7. Billing and Payment

Powernet will bill Customer for the total amount of the Monthly Recurring Charges ("MRC") in advance for 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 Services, Powernet will charge a prorated amount for all the MRCs from the date of execution to the end of the month in addition to charging a total amount for all MRCs one month in advance.

- A. Billing. Powernet will bill Customer based upon the terms set forth on the Service Order(s). 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.
- B. Payment. All undisputed amounts stated on each invoice are due and payable in U.S. dollars within seven (7) calendar days of the date on which Powernet sends the email notifying Customer that Customer's invoice is available (the "Due Date"). Customer will remit all payments via Automated Clearinghouse ("ACH") or wire transfer to PNG Telecommunications, Inc. in care of Fifth Third Bank, Cincinnati, Ohio, ABA #042000314, Account #07020828377 or such other bank account as Powernet may in writing direct Customer to remit payment pursuant to the notice provisions of this Agreement. Restrictive endorsements or statements on checks accepted by Powernet will not be binding upon Powernet.

- C. 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.
- D. Adjustments. Powernet may make billing adjustments for Services for one hundred and eighty (180) days after the date of the invoice or after the date of the Service for Services provided by Powernet or for the lesser of one hundred and eighty (180) days or any period allowed by law, government rule or regulation or contract.
- E. 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 waives the right to dispute the charges. Customer will submit all disputes via a written statement containing reasonably sufficient detail together with supporting documentation. Both parties shall use good faith efforts to resolve the dispute within forty-five (45) days from the Due Date of the invoice in question. At the end of the forty-five (45) 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 9.7.2 of this Agreement. Once Powernet makes a decision on the dispute the disputed amount shall be due or credited on the next invoice. 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
- F. 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. If at any time Powernet, in its discretion, believes that Customer presents an undue risk of nonpayment, then Powernet may require a deposit or other form of security for payment. Failure of Customer to provide a deposit or other 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.

8. Restrictions on Use: Customer may not do any of the following: (1) request scanning of networks and devices for which Customer does not have the express authority to do so; (2) request Services that will constitute any attack, hack, crack, or any other malicious usage or unlawful activity; (3) use the Services in such a way as to create an unreasonable load on Powernet systems or the Devices to which Customer have directed the Services to interact; (4) rent, sell, lease, redistribute, transfer, or otherwise allow a third party to use the Services; (5) use the Services to access or reveal any personal information; or (6) impersonate or in any way misrepresent Customer affiliation or authority to act on behalf of any entity. If Customer request scanning (intentionally or not) of a third party network, Customer agrees to be fully responsible for any damages attributable to such scanning, and Customer further agree that Powernet may provide all relevant information to lawful authorities if they pursue an inquiry into such scanning

9. Suspension and Termination

- A. Of Service/Service Orders/Agreement for Nonpayment. Except for amounts properly disputed by Customer, if payment in full is not received from Customer on or before the Due Date, Powernet shall have the right, after three (3) business days notice, to do any or all of the following: (i) suspend or terminate Service to Customer; (ii) suspend or terminate any or all Service Orders including any pending Service Orders or (iii) terminate this Agreement.
- B. Of Service/Service Orders/Agreement Without Notice for Fraud. Powernet reserves the right to suspend or terminate Service, Service Orders or this Agreement immediately, without notice and without liability, if Powernet reasonably believes that Customer is attempting to receive Service from Powernet by fraudulent means, that Customer's traffic is or will interfere or harm Powernet's network or other Customers, or that Customer is breaching Customer's warranty in Section 4.5.
- C. Of this Agreement. Other than for nonpayment, fraud or breach of Powernet's AUP by Customer, either party may terminate this Agreement if the other is in default of any material obligation and such default has not been cured within thirty (30) calendar days following receipt of notice of such default. In the event of such a termination by Customer, termination of this Agreement and refund of any amount paid or billed for Services affected by the default will be Customer's sole remedies.
- D. Customer remains liable. Suspension or termination of Service, Service Orders or this Agreement shall not excuse Customer from its obligation to pay for the Services and Customer shall remain liable for all charges incurred by Powernet to its suppliers and other third parties for the provision or disconnection of Service to Customer.
- E. Early Termination Liability. If this Agreement, Service Order or any Service is terminated by Customer before the expiration of the initial or any subsequent term, except as otherwise specifically allowed, or if Powernet terminates this Agreement or any Service for Customer's uncured material breach, Customer shall pay to Powernet an amount equal to the sum of

- a. All billed and unbilled charges which Customer has not paid at the time of termination;
- b. The monthly recurring charge for each active Service Order at the time of termination multiplied by the number of months remaining in the applicable Service Order Term
- c. Any revenue shortfall charge (which Customer agrees is reasonable) equal to the Monthly Usage Commitment multiplied by the number of months remaining in the initial or subsequent term on the date of such termination,
- d. All charges incurred by Powernet to its suppliers and other third parties for the provision or disconnection of Service to Customer. Customer agrees that the actual damages in the event of a termination would be difficult or impossible to ascertain, and that the charges described in this Section are intended to establish liquidated damages only and are not intended as penalties.

10. Limitation of Liability and 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 AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE.

- A. Disclaimer of Warranties. Powernet MAKES NO WARRANTY WITH RESPECT TO THE SERVICE OR EQUIPMENT OR ITS PERFORMANCE UNDER THIS AGREEMENT OR THE ATTACHED SERVICE SCHEDULES WITH THE EXCEPTION OF ANY ATTACHED SERVICE LEVEL AGREEMENTS. Powernet DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICE OR EQUIPMENT.
- B. Force Majeure. Neither party shall be liable, other than for any delay or failure in an obligation to pay money, nor shall any credit allowance or other remedy be extended, for any delay or failure of performance or equipment due to causes beyond such party's reasonable control whether foreseen or unforeseen. Acts and events deemed to be Force Majeure Events include but are not limited to: act of God, fire, flood, labor strike, sabotage, fiber cut, material shortages or unavailability or other delay in delivery not resulting from the responsible Party's failure to timely place orders therefore, war or civil disorder, earthquake, hurricane, tornado or terrorist act. The Party claiming relief under this Section shall notify the other in writing of the existence of the Force Majeure Event and shall be excused on a day-by-day basis to the extent of such prevention, restriction or interference until the cessation of such Force Majeure Event. In the event Powernet is unable to deliver Service as a result of a Force Majeure Event, Customer shall not be obligated to pay Powernet for the affected Service for so long as Powernet is unable to deliver.
- C. UNDER NO CIRCUMSTANCES WILL POWERNET BE LIABLE FOR LOST PROFITS, ANY DAMAGES RESULTING FROM LOSS OF DATA, SECURITY BREACH, PROPERTY DAMAGE, LOSS OF REVENUE, LOSS OF BUSINESS OR LOST SAVINGS, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, WHETHER OR NOT POWERNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE SECURITY, ACCURACY AND ADEQUACY OF ANY OUTPUT FROM THE SERVICES, AND FOR ANY RELIANCE THERE

11. Indemnification

Each Party shall defend and indemnify the other and their respective officers, directors, employees, suppliers, licensors, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or 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, complaint, action, proceeding or suit of a third party (including any investigation by a governmental agency or authority), 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.

- A. Customer Indemnification. Customer shall defend and indemnify Powernet and their respective officers, directors, employees, suppliers, licensors, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or 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, complaint, action, proceeding or suit of a third party (including any investigation by a governmental agency or authority), that arise or relate in whole or part to (i) Customer's breach of this Agreement, (ii) Customer's employees', agents', contractors', licensors', customers' or suppliers' unauthorized, illegal or fraudulent use of the Services or use of the Services in breach of the AUP.
- B. Procedure for Indemnification. The indemnified party promptly shall notify the indemnifying party of any claims that are subject to indemnification. The indemnified party shall have the right, at its own expense, to participate either directly or

through counsel in any litigation or settlement negotiations. The indemnified party shall provide reasonable assistance and cooperation in such defense at the indemnifying party's expense. The indemnifying party shall not agree to any settlement without the written consent of the indemnified party and such consent shall not be unreasonably withheld. The indemnification provided herein shall survive the termination of this Agreement.

12. Miscellaneous

If you use any of the services or products furnished to you under this Agreement in support of a US Government contract or subcontract, you do so solely at your own option and risk, and you remain solely and exclusively responsible for compliance with all statutes and regulations governing the furnishing of products and service to the US Government. We make no representations, certifications, or warranties with respect to the products or services to satisfy any such statutes and regulations.

- A. Relationship. This Agreement establishes an independent contractor relationship between us. Neither Powernet nor our employees shall be considered your employees under the meaning or application of any state or federal unemployment, insurance or workers compensation laws and we assume all responsibilities imposed by such laws with respect to our employees. Neither of us shall have any authority to represent itself as an agent, employee or representative of the other nor to assume or create any express or implied obligation on behalf of the other.
- B. Partner. Powernet may, at any time and without notice, partner with one or more providers to fulfill its obligations under this agreement
- C. Proprietary Information. Each party agrees to maintain in strict confidence the terms and conditions, 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 9.4. Each party acknowledges that a breach or threatened breach of this Section may cause irreparable harm, which cannot be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the Party that threatened to make or made the unauthorized disclosure consents to equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in addition to any other remedies that the Party to which the Proprietary Information belongs is entitled.
- D. Employee Solicitations. Customer acknowledges that Powernet is involved in a highly strategic and competitive business. Customer further acknowledges that Customer would gain substantial benefit and that Powernet would be deprived of such benefit, if Customer were to directly hire any personnel employed by Powernet. Except as otherwise provided by law, Customer shall not, without the prior written consent of Powernet, solicit the employment of Powernet personnel or induce any Powernet personnel to leave to go to another firm during the term of this Agreement and for a period of two (2) years following the termination or expiration of this Agreement. Customer agrees that Powernet damages resulting from breach by Customer of this provision would be impracticable and that it would be extremely difficult to ascertain the actual amount of damages. Therefore, in the event Customer violates this provision, Customer shall immediately pay Powernet an amount equal to US \$50,000 as liquidated damages and Powernet shall have the option to terminate this Agreement without further notice or liability to Customer. The amount of the liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs Powernet would incur to identify, recruit, hire and train suitable replacements for such personnel.
- E. Notices. All notices to be sent to a party pursuant to this Agreement shall be in writing and sent by (i) email effective when sent, (ii) private courier, effective upon delivery (iii) express mail priority next day delivery, effective one business day after deposit with the service or (iv) confirmed facsimile sent during business hours effective the same day when sent, receipt confirmed by sender's equipment. The address for notice for Powernet is below, and the Customer's is contained in the Service Order.

For service and account management issues:

Powernet
8805 Governor's Hill Drive, Suite 250
Cincinnati, Ohio 45249
Attn: VP Technical Solutions & Support
Phone: 866-201-1300
Fax: 877-813-7419
Email: Servicemanagement@Powernetco.com

For legal issues:

Attn: Legal Department

Fax: (513) 645-4960

Email: legal@Powernetco.com

- F. Notices Disputes. The Parties desire to resolve disputes arising out of or relating to this Agreement without litigation.
- G. Arbitration. 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. 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 by a single arbitrator experienced in the matters at issue and selected by the Parties 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.
- H. 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.
- I. Interpretation. No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of this Agreement.
- J. 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.
- K. 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.
- L. Integration. This Agreement and 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.
- M. 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.
- N. 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.
- O. 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.
- P. Assignment. Customer shall not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Powernet, 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.
- Q. Costs and Attorney's Fees. 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.

