



CALL CENTER SOLUTIONS AGREEMENT

This Call Center Solutions Agreement is made by and between PNG Telecommunications, Inc. d/b/a Powernet ("Powernet"), an 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 Call Center Solutions Agreement will constitute notice to you 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

1.1. Agreement. The agreement between the parties ("Agreement") consists of this Call Center Solutions Agreement ("CCSA") and 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 CCSA and the Service Order, the Service Order shall control.

1.2. Services. Services offered by Powernet to Customer for purchase are described in the CCSA and the Service Orders (the "Services"). The Service Orders are executed by both parties.

2. Term

2.1. Term. This CCSA 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. The terms of this CCSA shall continue to govern the parties' duties and rights until the expiration of all Services Orders' terms or any succeeding Service Orders' terms or unless the Service Order is terminated as permitted by this CCSA.

2.2. Service Order Term. The initial term of this Service is specified in the Service Orders. When Powernet makes Customer's Service available, Powernet will send Customer a notice confirming Customer's Service availability and the Service Order Term shall commence upon the sending of such notice by Powernet. Upon the expiration of any initial Service Order Term, the Service Order Term will automatically renew for succeeding terms of one (1) month under the terms and conditions of the Service Order and this Agreement at the then current rates for such Service until terminated by either party on thirty (30) days notice.

3. Ordering Service

3.1. 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.

3.2. 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 CCSA 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 for Service

4.1. Charge and Rate Conditions. All charges and rates are based on the following conditions and reservation of rights by Powernet:

4.1.1. The Services may only be used for Customer or Authorized User communications. Customer shall not resell Services to other carriers or IP Communications resellers. If Customer resells Services, Customer is subject to rate increases and Customer agrees to pay such increases.

4.1.2. 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 contained in this Agreement 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 Agreement.

4.2. OCN Average Percentage. 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 all such adjusted charges.

4.3. Rates. The applicable U.S. long distance interstate rate is determined based upon the originating NPA/NXX of an outbound call. Long distance domestic intrastate rates are per NPA/NXX and are for NPA/NXX-wide termination within the same NPA/NXX.

4.3.1. Long distance domestic rates for the contiguous forty-eight (48) U.S. states 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 with four (4) digit rounding. Extended Domestic and International rates set forth in the Service Order, with the exception of rates for Mexico, are shown in terms of a rate per minute and are billed in six (6) second increments with an initial six (6) second increment with four (4) digit rounding. Calls for Mexico are billed in full minute (60 second) increments. Service availability is subject to the availability of facilities to and in the particular countries. Customer will also be charged a Carrier Recovery Admin Fee of three and nine-tenths percent (3.9%) of international and interstate usage and associated charges, taxes and associated governmental fees per billing period.

4.3.2. All domestic rates and charges are subject to change upon five (5) calendar days notice to Customer. Extended Domestic and International rates and charges, including for Mexico and Canada, are subject to change upon one (1) calendar day notice to Customer. All rate updates shall be sent to Customer via email to the contact person listed in the notice section of the CCSA. Customer shall provide Powernet with a valid email address to which Powernet shall send all rate update notifications. All notifications are effective when sent.

4.4. Call Jurisdiction. All calls associated with the Service will be rated as an interstate or intrastate call based on the originating out pulsed ANI and the terminating ANI provided to Powernet. When such information is available, Powernet will use the Local Routing Number ("LRN") of the originating and terminating numbers to determine the jurisdiction of a call on a per call basis. If no such information is available, jurisdiction of a call and applicable rate are determined using the NPA/NXX of the originating and terminating numbers. If any of Customer's calls do not include complete and accurate call detail, Powernet reserves the right to bill any call lacking jurisdictional information as an intrastate call.

4.5. IP Originated. If Powernet is unable to establish that Customer's traffic is IP originated traffic, Powernet may at its option charge Customer an incremental five cents (\$.05) per minute of US domestic traffic delivered to Powernet which Powernet cannot establish was IP originated.

4.6. Blended Rate Plans. For customers utilizing Blended Rate Plans, defined as a flat rate each for interstate outbound, intrastate outbound, interstate inbound, and/or intrastate inbound traffic jurisdictions, Powernet will

identify excessive traffic terminating to or originating from Extreme High Cost Areas ("XHCA"), defined as extreme high-cost LATAs/OCNs and certain non-Regional Bell Operating Company served telephone numbers. Powernet's XHCA List is found at www.powernetco.com. Powernet shall apply a XHCA rate to minutes which originate from or terminate to these XHCA.

4.7. 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.

4.8. 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.

4.9. Acceptable Use Policy. Customer shall abide by Powernet's then-current Acceptable Use Policy, ("AUP") the terms of which are made available for viewing over the Internet at <https://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.

5. Billing and Payment

5.1. Weekly Prepayment. Customer shall prepay to Powernet weekly an amount estimated to cover at least one week's future charges as designated by Powernet. Prior to the start of Service, Customer shall prepay not only the amount to cover at least the first week's future charges, but Customer will also prepay the full amount for any requested equipment and support as stated on the Service Order. Customer will remit all payments via wire transfer or ACH to Powernet 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. Customer shall pay a fee in the amount of twenty dollars (\$20.00) for all wires in an amount less than eight hundred dollars (\$800.00).

5.2. Unscheduled Prepayment. If Customer's charges reach eighty percent (80%) of Customer's prepaid amount at any time, Powernet will notify Customer to immediately make another prepayment to cover the rest of the anticipated charges for the remaining days of the week via wire transfer or ACH. If at any time, Customer's charges reach one hundred percent (100%) of the amount Customer prepaid, then Powernet may suspend or terminate Services immediately without notice. In order for Customer to resume Services, Customer shall make another prepayment in the amount designated by Powernet.

5.3. Invoice. Powernet will prepare an invoice weekly in arrears and send 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. Customer shall be responsible for all transaction charges assessed by, or on behalf of, its own bank. If at any time, Customer owes Powernet any amount whatsoever and fails to remit a prepayment to pay the amount owed in addition to its prepaid amount for the future week, Powernet, in addition to other remedies available to it under this Agreement or at law, may charge a late fee of the lesser of one and one-half percent (1.5%) per month or the maximum fee allowed by law of the unpaid balance which shall accrue from the date of the invoice.

5.4. 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.

6. Customer Warranties

6.1 Customer shall only deliver IP originated traffic to Powernet.

6.2 Customer shall not send any calls that would incur any third party charges or are calls that Powernet does not support, including but not limited to 900, 976, 911, 900, 700, Directory Assistance or Operator Services.

6.3 Customer shall deliver complete and accurate calling party number ("CPN") and shall not re-originate traffic and/or modify, alter or delete CPN, originating point codes or any other signaling information or call detail in connection with the call. Customer shall deliver "P-Asserted-ID Header" in the Call Detail Record Header for each call.

6.4 Powernet shall assign Customer a concurrent call limit ("CCL") which can be adjusted by Powernet at any time. Customer shall comply with Powernet's CCLs.

6.5 Customer shall comply with all local, state and federal Do Not Call regulations and other applicable regulations as described in 47 CFR section 64.1200 and 16 CFR section 310.

6.6 Customer shall not send traffic or take any action that harms or jeopardizes the integrity of Powernet's or a third party's network.

6.7 Powernet may at any time, restrict ports (SIP Trunks) or the amount of Customer's calls per second ("CPS"). Customer shall comply with Powernet's restriction to Customer's CPS and ports (SIP Trunks).

6.8 Customer is solely responsible for selecting, supplying, installing, operating, maintaining, and the compatibility of any required Customer Premises Equipment ("CPE"), facilities and/or other materials used in connection with the Service, including any related applications, systems and software.

6.8.1. Customer may purchase CPE and support from Powernet and pay for such at the start of Service. Powernet expressly disclaims any responsibility for CPE unless the CPE and/or support is purchased through Powernet. Customer will: (1) ensure that all CPE and any related applications, systems and software used with or connected to the Services, comply with all applicable laws, licenses, industry standards and reasonable instructions provided by Powernet; and (2) understand that if any CPE or related applications, systems, or software impairs Customer's use of the Services Customer will remain liable for applicable charges.

6.8.2. Upon purchase by Customer, Powernet shall provide technical support for Customer's Service. Powernet shall provide technical support for the Powernet provided 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 commercially reasonable efforts to provide solutions to Customer.

- a. Technical support will be provided to Customer on an as needed basis.
- b. 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 issues.
- c. Customer shall notify Powernet of any events affecting Customer's business that may hinder Powernet's ability to provide technical support services.
- d. 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 and charged separately on an hourly basis. Powernet will use commercially reasonable efforts to begin technical support within sixty (60) minutes of receiving a request from Customer.
- e. If Powernet determines that a part has failed, then Powernet will provide on-site replacement of the failed part within two (2) business days of Powernet's determination that the part has failed.
- f. Any issues of quality of the technical support provided by Powernet will not be considered a breach of this Agreement.

6.9. Customer shall, at its own expense, take all reasonable physical and information system security measures necessary to protect all equipment, software, data and systems located on Customer's premises or otherwise in Customer's control and used in connection with the Service. Customer is responsible for all security measures with respect to Customer's Facilities, including firewall security policies, even if Customer uses a third party (or

Powernet) to configure and implement such measures. Customer will be responsible for damage to any equipment used in conjunction with the Service. Powernet shall have no liability whatsoever for damage to Customer's information system, equipment, software or data as a result of Customer's use of the Service.

7. Suspension and Termination

7.1. Of Service/Orders/Agreement Without Notice. 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 any of Customer's warranties in Section 6 or Powernet's AUP as agreed to in section 4.9, then Powernet reserves the right to do any or all of the following: block or reject calls, suspend or terminate Service, Service Orders or this Agreement immediately, without notice and without liability,

7.2. Of this Agreement. Other than for nonpayment, fraud or breach of Powernet's AUP or Customer's warranties, 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.

7.3. Termination Liability. If this Agreement, Service Order or any Service is terminated, Customer shall pay to Powernet an amount equal to the sum of all billed and unbilled charges which Customer has not paid at the time of termination. Customer agrees that the actual damages in the event of a termination for a Customer breach 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.

8. Optional Services

8.1 Inbound SIP DID Service. Inbound SIP DID Service is an IP termination service for Public Switched Telephone Network ("PSTN") originated calls. Powernet will provide Customer with connectivity to the PSTN, and will deliver voice traffic to Customer through a net protocol conversion to an IP format via Session Initiation Protocol ("SIP") service. Powernet will assign DID numbers to Customer or Customer may port DIDs to Powernet for the provision of the Services. This Inbound SIP DID Service will be provided to Customer with the following additional terms if Customer requests this service on a signed Service Order.

8.1.1 Customer will pay a weekly recurring charge per DID as stated on the Service Order in addition to Outbound usage charges per Section 4 and charges described below.

8.1.2. Customer will pay weekly usage charges measured on Customer's total usage (in minutes) of all Inbound SIP DID Services.

8.1.3. The billing increments for the Inbound SIP DID Service are six (6) second initial billing increment and six (6) seconds for any additional billing increments. Any partial billing increment shall be rounded-up to the next interval.

8.1.4. The Inbound SIP DID Service is intended for use as an inbound-only service, and does not directly support any outbound calling capability, including but not limited to 911 calls. Unless and to the extent that Customer has combined the Service with another service (whether provided by Powernet or otherwise) for the purpose of enabling certain outbound calling capabilities. Customer warrants and represents that it is not relying on Powernet to provide 911, E911 or any other emergency services ("911 Services"). Customer agrees that Powernet shall incur no liability, direct or indirect to any person who dials or attempts to dial 911 or any other emergency services number. Customer hereby acknowledges and agrees that it is fully responsible for all costs and expenses associated with 911 Services.

8.1.5. Customer recognizes that the Service provides local inbound-only connectivity from the PSTN together with enhanced functionality, including but not limited to conversion and delivery to Customer in an IP-based format. For regulatory purposes Powernet treats all Inbound Services as local in nature although there is no guarantee that such interpretation will be accepted by the relevant regulatory authority. Any change in applicable law, regulation, decision, rule or order that finds that the connectivity associated with the Inbound Service is not eligible for

regulatory treatment as a local service, Powernet reserves the right to modify the terms and conditions to be consistent with such ruling, decision or determination. In such case, Customer may terminate this Inbound SIP DID Service without any termination liability (other than charges for the Service provided through the effective date of termination).

8.1.6. Customer may elect to port an existing Telephone Number ("TN") to Powernet ("Port-In") for use of the Inbound SIP DID Service. Powernet will support all valid requests and will cooperate with Customer to perform any Port-In in accordance with Customer's reasonable directions and Powernet's standard operating procedures. In order to accomplish any Port-In, Customer will be required to provide Powernet with letter of agency on behalf of Customer in form and substance as reasonably requested by Powernet. Customer hereby represents and warrants to Powernet that Customer has all necessary rights and authority necessary for any Port-In, and Customer hereby agrees 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 Port-In (or request for Port-In) except if caused by Powernet's willful misconduct. A non-recurring charge will be assessed for each ported DID.

8.2. Toll Free Inbound Service. With the Toll Free Inbound Service, Powernet may deliver Toll Free traffic to Customer through dedicated Internet ports, dedicated private line service or the Public Internet including TDM-originated Toll Free calls by converting the TDM-originated calls into Internet Protocol packets and delivering such calls to Customer's IP equipment. This Toll Free Inbound Service will be provided to Customer with the following additional terms if Customer requests this service on a signed Service Order.

8.2.1. Customer's usage will be billed and paid in the same manner as outlined in Section 4 above.

8.2.2. Sections 8.1.4 through 8.1.6 apply to this Toll Free Inbound Service as well as the Inbound SIP DID Service.

9. Limitation of Liability and Disclaimer of Warranties

9.1. Limitation of Liability. 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 FORSEEABLE.

9.2. Disclaimer of Warranties. Powernet MAKES NO WARRANTY WITH RESPECT TO THE SERVICE OR EQUIPMENT OR ITS PERFORMANCE UNDER THIS AGREEMENT. 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.

9.3. 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.

10. Indemnification

10.1. Both Parties 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.

10.2. 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, and (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.

10.3. 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.

10.4 Customer's liability. If Customer breaches any of its warranties pursuant to Section 4.9 or 6 of this Agreement, Customer will be solely liable for all damages, costs, 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.

10.5 Maintenance. In the event Powernet determines that it is necessary to interrupt Services or that there is a potential for Services to be interrupted for the performance of system maintenance, Powernet will use good faith efforts to notify Company prior to the performance of such maintenance and will schedule such maintenance during non-peak hours. In no event shall interruption for system maintenance constitute failure of performance by Powernet.

11. Miscellaneous

11.1. 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 11.1. 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.

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.

11.2. 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: Network Service Director
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

11.3. Disputes. The Parties desire to resolve disputes arising out of or relating to this Agreement without litigation.

11.3.1. 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 11.3.2 of this Agreement. Once Powernet makes a decision on the dispute the disputed amount shall be due or credited on the next invoice.

11.3.2. 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.

11.4. 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.

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

11.6. Choice of Law.

11.6.1. 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.

11.6.2. In the case of an action to collect past due payments, the Parties agree that Powernet may, in its sole discretion, in place of filing for arbitration, 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.

11.7. 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.

11.8. 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.

11.9. 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.

11.10. 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.

11.11. 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.

11.12. Costs and Attorneys' 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.