



DEDICATED MASTER SERVICES AGREEMENT

This Dedicated Master Services 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 Dedicated 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

1.1. Agreement. The agreement between the parties ("Agreement") consists of this Dedicated Master Services Agreement ("DMSA"), 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 DMSA, Schedule or a Service Order, the document that shall control will be in the following order: 1) Service Order, 2) Schedule 3) DMSA.

1.2. 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. Term

2.1. Term. This DMSA 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.

2.2. Service Schedule and Service Order Term. Notwithstanding anything else in this DMSA, each Service Schedule or Service Order placed under this DMSA shall have its own term and the terms of this DMSA 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 DMSA.

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 DMSA 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.

3.3. 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.

4. Charges for Service

4.1. 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.

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) access or access related charges; (viii) customer premises equipment and (ix) Customer's request for routes or facilities other than those selected by Powernet for provision of the Service.

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

4.2.1. 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.

4.2.2. 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.

4.2.3. Minimum Commitment. Customer agrees that during the initial and any subsequent term of this Agreement that Customer's monthly usage invoiced dollar amount shall equal or exceed the specified Monthly Usage Commitment in the Service Order. If Customer fails to meet its Monthly Usage Commitment in any month, Powernet may assess a shortfall charge equal to the difference between the Monthly Usage Commitment and Customer's actual usage invoiced under the Agreement for such month.

4.3. 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.

4.4. 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.

4.5. 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. **Billing Period.** Powernet will bill Customer for the total amount of the Monthly Recurring Charges ("MRC") in advance and for usage based Services in arrears on a monthly basis except for charges for installation and other non-recurring charges that Customer shall pay in advance of any Service being provisioned by Powernet. 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. On the first billing for dedicated circuits and Services, Powernet will charge a prorated amount for all the MRCs from the date of activation to the end of the month in addition to charging a total amount for all MRCs one month in advance.

5.2. **Billing.** Powernet will bill Customer monthly. 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.

5.3. **Payment.** All undisputed amounts stated on each invoice are due and payable in U.S. dollars within twenty-two (22) 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.

5.4. **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.

5.5. **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.

5.6. **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.

6. Suspension and Termination

6.1. **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.

6.2. **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.

6.3. **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.

6.4. **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.

6.5. **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 (i) all billed and unbilled charges which Customer has not paid at the time of termination; (ii) 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, (iii) 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, and (iv) 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.

7. Limitation of Liability and Disclaimer of Warranties

7.1. **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.

7.2. **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.

7.3. **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.

8. Indemnification

8.1. **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.

8.2. **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, (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.

8.3. 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.

9. Miscellaneous

9.1. 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 9.1. 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.

9.2. 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

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

9.3.1. 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 PowernetDMSAv2w
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immediately commence arbitration in accordance with Section 9.3.2 of this Agreement. Once Powernet makes a decision on the dispute the disputed amount shall be due or credited on the next invoice.

9.3.2. 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.

9.4. 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.

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

9.6. Choice of Law.

9.6.1. 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.

9.6.2. 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.

9.7. 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.

9.8. 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.

9.9. 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.

9.10. Telephone Solicitation. If Customer uses the Services for telephone solicitation, Customer shall follow all of the national do-not-call requirements as described in 47 CFR section 64.1200 and 16 CFR section 310.

9.11. 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.

9.12. 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.

9.13. 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.