



MANAGED SERVICES AGREEMENT

This Managed Services Agreement is made by and between PNG Telecommunications, Inc. d/b/a Powernet/Maxis360 (“Powernet/Maxis360”) dba/Powermax an Ohio corporation with principal place of business located at 8805 Governor’s Hill Drive, Suite 250, Cincinnati, Ohio 45249 and Customer. Powernet/Maxis360 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

- 1.1 **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/Maxis360 (“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.
- 1.2 **Services.** Services offered by Powernet/Maxis360 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/Maxis360 and also of services procured by Powernet/Maxis360 from third party suppliers.

2. Term

- 2.1 **Term.** This MSA shall become effective on the date a Service Order is fully executed by both Powernet/Maxis360 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 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.

3. Ordering Service

- 3.1 **Service Orders.** All Services shall be ordered on Powernet/Maxis360’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/Maxis360 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 MSA or any Service Schedule are hereby objected to by Powernet/Maxis360 and shall not constitute part of the agreement unless explicitly accepted by Powernet/Maxis360 in writing. No action by Powernet/Maxis360 (including, without limitation, provision of Services to Customer pursuant to such Service Order) shall be construed as binding or estopping Powernet/Maxis360 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/Maxis360 notifying Customer that Service is available, Customer shall pay to Powernet/Maxis360 all third-party supplier costs including but not limited to pre-engineering costs, installation costs and cancellation fees that are charged to Powernet/Maxis360 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/Maxis360 accepts the Service Order. Customer is liable for all charges (recurring and nonrecurring) for Services provided to Customer both by Powernet/Maxis360 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/Maxis360 (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/Maxis360 acceptance; (iv) expense incurred for Service redesign or modification; (v) reinstallation charges following any suspension of Service by Powernet/Maxis360; (vi) disconnection charges; (vii) customer premises equipment.
- 4.2 **Charge Conditions.** All charges are based on the following conditions and reservation of rights by Powernet/Maxis360:
 - 4.2.1 The Services may only be used for Customer or Authorized User communications.
 - 4.2.2 Powernet/Maxis360 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/Maxis360 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.

- 4.3 **Taxes.** All charges for Service are net of Applicable Taxes (as defined below). Except for taxes based on Powernet/Maxis360'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/Maxis360 with a valid exemption certificate (in a form reasonably acceptable to Powernet/Maxis360 and Powernet/Maxis360 will give effect to any such exemption prospectively. Customer agrees to indemnify, defend and hold harmless Powernet/Maxis360 from any liability or expense associated with Applicable Taxes.

5. Billing and Payment

- 5.1 **Billing Period.** Powernet/Maxis360 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/Maxis360. On the first billing for Services, Powernet/Maxis360 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.
- 5.2 **Billing.** Powernet/Maxis360 will bill Customer based upon the terms set forth on the Service Order(s). Powernet/Maxis360 will send to Customer via email a notice that Powernet/Maxis360 has prepared Customer's invoice and that Customer may log on to Powernet/Maxis360'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 seven (7) calendar days of the date on which Powernet/Maxis360 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/Maxis360 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/Maxis360 will not be binding upon Powernet/Maxis360.
- 5.4 **Late Payment.** If Customer fails to remit payment of all undisputed amounts by the Due Date, Powernet/Maxis360, 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/Maxis360 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/Maxis360 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/Maxis360 in its discretion, are conditions for the commencement and continuation of provision of the Services by Powernet/Maxis360. If at any time Powernet/Maxis360, in its discretion, believes that Customer presents an undue risk of nonpayment, then Powernet/Maxis360 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/Maxis360 within two (2) business days of Powernet/Maxis360's request shall be a material breach of Customer's obligations under this Agreement and shall entitle Powernet/Maxis360 to all remedies Powernet/Maxis360 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/Maxis360 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/Maxis360 reserves the right to suspend or terminate Service, Service Orders or this Agreement immediately, without notice and without liability, if Powernet/Maxis360 reasonably believes that Customer is attempting to receive Service from Powernet/Maxis360 by fraudulent means, that Customer's traffic is or will interfere or harm Powernet/Maxis360'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/Maxis360'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/Maxis360 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/Maxis360 terminates this Agreement or any Service for Customer's uncured material breach, Customer shall pay to Powernet/Maxis360 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/Maxis360 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/Maxis360 NOR ANY OF Powernet/Maxis360'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/Maxis360 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/Maxis360 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/Maxis360 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/Maxis360 is unable to deliver Service as a result of a Force Majeure Event, Customer shall not be obligated to pay Powernet/Maxis360 for the affected Service for so long as Powernet/Maxis360 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/Maxis360 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 **Government Entity Policy.** 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.
- 9.2 **Relationship.** This Agreement establishes an independent contractor relationship between us. Neither Powernet/Maxis360 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.

- 9.3 **Partner.** Powernet/Maxis360 may, at any time and without notice, partner with one or more providers to fulfill its obligations under this agreement
- 9.4 **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 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/Maxis360 may disclose Customer Proprietary Network Information to any agent of Customer to initiate or provide Services and bill or collect for the Services.

9.4.1 **Employee Solicitations.** Customer acknowledges that Powernet/Maxis360 is involved in a highly strategic and competitive business. Customer further acknowledges that Customer would gain substantial benefit and that Powernet/Maxis360 would be deprived of such benefit, if Customer were to directly hire any personnel employed by Powernet/Maxis360. Except as otherwise provided by law, Customer shall not, without the prior written consent of Powernet/Maxis360, solicit the employment of Powernet/Maxis360 personnel or induce any Powernet/Maxis360 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/Maxis360 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/Maxis360 an amount equal to US \$50,000 as liquidated damages and Powernet/Maxis360 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/Maxis360 would incur to identify, recruit, hire and train suitable replacements for such personnel.

- 9.5 **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/Maxis360 is below, and the Customer's is contained in the Service Order.

For service and account management issues:

Powernet/Maxis360
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

- 9.6 **Disputes.** The Parties desire to resolve disputes arising out of or relating to this Agreement without litigation.
- 9.6.1 **Billing Disputes.** Customer shall submit all disputes to Powernet/Maxis360 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/Maxis360 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/Maxis360 makes a decision on the dispute the disputed amount shall be due or credited on the next invoice.
- 9.6.2 **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.

- 9.7 **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.
- 9.8 **Interpretation.** No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of this Agreement.
- 9.9 **Choice of Law.**
- 9.9.1 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/Maxis360 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.
- 9.9.2 In the case of a suit to collect past due payments, the Parties agree that Powernet/Maxis360 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/Maxis360 sends Customer's account to an outside collection agency or institutes collection proceedings against Customer, Powernet/Maxis360 has the right to charge Customer for any collection fees.
- 9.10 **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.
- 9.11 **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.
- 9.12 **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.
- 9.13 **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.
- 9.14 **Assignment.** Customer shall not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Powernet/Maxis360, which shall not be unreasonably withheld. Customer must be current on all payments required by this Agreement before any assignment is approved by Powernet/Maxis360. Any such assignment or transfer of Customer's rights or obligations without such consent shall constitute a default of a material obligation.
- 9.15 **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.
10. **Description of Service.** Powernet/Maxis360 will provide Managed Services for service(s) /device(s) specified on customer proposal and/or Scope of Work.
11. **Service Level Agreement.** Powernet/Maxis360 will provide a professional Managed Services program including the following:
- On-site and remote support for IT network infrastructure hardware
 - 24X7 proactive monitoring of all IT network infrastructure hardware
 - Ensure all systems are patched and maintained at peak performance
 - Configuration assistance
 - Provide highly trained technical support representatives
 - Provide reliable and courteous support to designated contact

- Provide a safe and secure IT environment
- Ensure all critical data is properly backed up and tested regularly for restoration
- Provide a dedicated account representative
- Conduct quarterly technology review meetings
- Provide performance and asset reporting
- Review and assistance with telephone company billing and service

12. **Service Hours.** Support during normal business hours is staffed between 7:30 a.m. – 6:00 p.m. EST, Monday through Friday, excluding holidays. Emergency coverage is available 24 hours a day, 7 days a week, including holidays.

Technical Support Team Contact Information – Normal Business Hours

Support E-mail contact: support@maxis360.net

Phone Contact: 321-214-2222

Web Portal

Support Web Portal: <https://connect.maxis360.net/support>

The Web Portal will allow you to open new service requests as well as update existing service requests for your organization. To request a login ID and password for our customer portal, please email support@maxis360.net. Support during non-business hours is coverage for emergency situations 24 hours a day, 7 days a week, including holidays. All non-emergency issues should be submitted via e-mail, voice mail or web. A charge will be incurred for non-emergency issues that are responded to by the Technical Support team during non-business hours. Emergency Support for issues that are not considered emergency situations will be billed for each call at the rates defined in Rates and Payments. The classification between an emergency and a non-emergency situation is at the reasonable discretion of the Support Engineer. In addition, Powernet/Maxis360 shall provide customer the reasonable opportunity to dispute such classification before such rates are billed to customer.

Emergency Support

Technical Support Team Contact Information – Non-Business Hours EMERGENCY

Contact Support at 321-214-2222 for our technical support queue.

You will be promoted by the automated attendant that our technical support department is closed and then you may select one (1) to leave a voicemail, or nine (9) for emergency support. Select nine (9) for emergency support and the system will contact an on-call support engineer. If for some reason the support engineer is on another support call please leave a voicemail and they will return your call as soon as they are available, or they will forward your request to a support supervisor if they cannot respond in a timely manner.

Emergency Support Calls definitions:

- Network outage affecting services for one or more locations.
- The primary server is not running, affecting critical business applications.
- Loss of phone service for entire organization or business facility.
- Any site running on the backup server for any reason other than scheduled maintenance.
- A Call Center whose business model is to make outbound calls. Inability to make any outbound calls and there is no workaround.
- Full loss of a server.
- A site is unable to perform its core mission.

13. **SERVICE LEVELS.**

- Normal Business Hours Call back within thirty (30) minutes.
- Non-Business Hours – Non-Emergency by the end of the first business day following the report of the issue.
- Non-Business Hours – EMERGENCY Call back within two (2) hours.

14. **Scheduled Maintenance Windows.** Our internal systems maintenance window is each Sunday from 6:00pm EST – 11:00pm EST.

15. **Problem Management.** Powernet/Maxis360 will use reasonable efforts to keep the current personnel who interface with customer in place. This commitment shall not apply in the event that the applicable personnel are promoted, leave the company for any reason or reassignment is required due to business circumstances.

Upon detection of or a reported failure or issue, the Powernet/Maxis360 Managed Operations Center will:

- Create a new service request.
- Provide verbal notification to customer of the outage including:
 - Time of outage
 - Scope of outage
 - Potential outage duration (when possible)
 - Business Impact

If the Powernet/Maxis 360 Managed Operations Center determines a problem with the current system software, the Operations Center will make an immediate attempt to restore remotely, including but not limited to: reload configurations, reboot/reset device, communicate with designated end-user for front panel viewing to determine if problem is related to cabling, AC power, etc.

Where appropriate, the Operations Center will guide end-user through repair. The Network Operations Center will notify customer of the problem and provide as much information as possible to enable resolution of the problem.

Where available, the Network Operations Center will use the remote access connection to the device for diagnostics and restoral of contracted Maxis Managed devices.

If problem is determined to be connection or other vendor related the Operations Center will provide notification to customer of the problem and supply other vendors with available information to aid in the resolution of the problem.

If problem is determined to be customer related, such as operator error, hardware, software, hardware maintenance issue, software maintenance issue and/or applications related, then the Network Operations Center will contact the designated customer central point of contact for repair. The Network Operations Center will make every effort to provide this designated person/group/help desk with all pertinent information regarding the outage that can be obtained from the device and/or network management system.

As agreed to by customer and Powernet/Maxis360, the Operations Center will escalate to the appropriate technical and/or management chain, including customer, Powernet/Maxis360 and all vendors if problem is not resolved within specified time periods.

When notified of repair, the Operations Center will test for network management system visibility, run diagnostic test to verify stability, and verify with customer that applications are up and running before closing ticket. If monitoring is required the Operations Center will keep the Service Request open until satisfied that the systems are stable.

As a documented procedure, the Operations Center will return the systems to normal primary operating mode from any alternative operations if any were invoked. The Operations Center will follow pre-defined procedures to ensure that users will be minimally affected during restoral process.

The Operations Center will prepare a trouble resolution report that includes sequence number, site equipment description, date and time closed problem resolution description, and current status.

If the Operations Center determines degrading conditions are occurring they will work with the customer to first remotely correct any system degradation. If for some reason the degradation requires performing more detailed analysis or if the issue cannot be resolved without interrupting the systems, then Powernet/Maxis360 will coordinate with customer to address the issue at a non-critical date and time as determined by both parties.

When notified of repair, the Operations Center will test for network management system visibility, run diagnostic test to verify stability, and verify with customer that applications are up and running before closing ticket. If monitoring is required the Operations Center will keep the Service Request open until satisfied that the systems are stable.

As a documented procedure, the Operations Center will return the systems to normal primary operating mode from any alternative operations if any were invoked. The Operations Center will follow pre-defined procedures to ensure that users will be minimally affected during restoral process.

The Operations Center will prepare a trouble resolution report that includes sequence number, site equipment description, date and time closed problem resolution description, and current status.

16. **Change Management.** Operations Center staff will document all requested or required systems changes in the Service Request platform. The Operations Center will share with customer, change control for the entire customer communications network including: the systems management, network topology, device configurations, network diagrams, and software revisions.
 - Change activity includes, but not limited to, device deletions, device reallocations and device configurations.
 - The above change activity will apply to single event/device support. All large-scale change requirements will be viewed outside the scope of this contract with prices to be quoted on request.
17. **Credits for Service Level Failures.** For purposes of calculating availability and service levels, Powernet/Maxis360 may exclude and shall not be held responsible for failures to provide Services if any of the following Exclusions exist:
 - There is a defect or malfunction in any hardware and software which adversely affects Powernet/Maxis360 ability to perform the Services.
 - Problems caused by customer Resources not under Powernet/Maxis360 management.
 - Any agreed upon periods of time that are necessary for repairs or maintenance, including scheduled maintenance.
 - Changes made to the network which customer failed to communicate to Powernet/Maxis360.
 - Circumstances that constitute a Force Majeure Event as described above.
 - Service Failures that result from actions or inactions of customer contrary to Powernet/Maxis360' recommendations.
 - Delays or downtime due to any factor outside of Powernet/Maxis360 reasonable control.
 - Loss of Internet connectivity to customer site for any reason.
18. **Travel Expense.** Powernet/Maxis360 will invoice for any additional travel expenses to include parking and tolls.
19. **Remote Access.** Powernet/Maxis360 will attempt to resolve issues over the phone or via remote access. If an issue is unable to be resolved in the manner, Powernet/Maxis360 will schedule an engineer for an on-site visit. Powernet/Maxis360 reserves the right to dispatch an engineer for any phone support exceeding 30 minutes or at the sole discretion of Powernet/Maxis360 should common practice dictate it would be more efficient to address the issue onsite.
 - A. **Managed Services- IT Desktop/Workstation.** The following items are included:
 - 24X7 Proactive Monitoring and Alerting**
 - a. Event log monitoring
 - b. Antivirus/Antimalware protection status
 - c. Hacking Attempts
 - d. Disk Space Consumption

- e. Windows Service Check

Patch Management

- f. Microsoft
- g. Third Party (Adobe, Java, Mozilla)
- h. Line of Business Applications

Security

- i. Deploy roles based security permissions
- j. Prevent Unauthorized software installations
- k. Apply standardized security policies such as password management
- l. Perform regularly scheduled vulnerability scans

Desktop Maintenance

- m. Drive Defragmentation
- n. Temporary File Clean Up
- o. Antivirus/Antimalware scan

Reporting

- p. Daily, Weekly and Monthly status reports
- q. Asset Reporting
- r. Software Compliance
- s. Provide Performance Reporting

B. Managed Services- Firewalls/Perimeter Protection. The following items are included:

24X7 Proactive Monitoring and Alerting

- a. Event log monitoring
- b. Attack detection
- c. Hacking Attempts
- d. Rogue Wireless Access Points
- e. Unauthorized administrative changes

Security Features

- f. Firewall rules review and deployment
- g. Intrusion Prevention
- h. Web Content Filtering
- i. Secured Wireless Access
- j. Data Loss Prevention

VPN Services

- k. Remote Access SSL VPN
- l. Two Factor Authentication
- m. Network Access Control / Host Integrity Monitoring
- n. Site to Site VPN

C. Managed Network Services. The following items are included:

24X7 Proactive Monitoring and Alerting

- a. Data and Voice Circuit Monitoring
- b. Bandwidth Monitoring
- c. Interface Errors
- d. CPU Utilization
- e. QOS compliance / Voice Quality Monitoring

Management Features

- f. Issue Reporting and Resolution coordination with Telco Vendors
- g. Issue Reporting and Resolution coordination with Hardware Vendors

D. Managed Services-Physical and Virtual Servers. The following items are included:

- a. 24X7 Proactive Monitoring and Alerting
- b. Critical Business Applications
- c. Security Events
- d. Windows Service Checks
- e. Antivirus/Antimalware protection
- f. Server Performance (Processor Health, Memory Usage, Network Interface)
- g. Event log monitoring
- h. Hacking Attempts
- i. Disk / Raid Drive Controller status
- j. Server Temperature
- k. UPS / Power status
- l. Power Supply status
- m. Disk Space Consumption
- n. Exchange Server statistics

- o. SQL Server statistics

Backup and Recovery

- p. On-site and Off-site Data Backups
- q. Live On-line Server Imaging

Patch Management

- r. Microsoft
- s. Third Party (Adobe, Java, Mozilla, Chrome)
- t. Line of Business Applications

Security

- u. Deploy roles based security permissions
- v. Secure data access for users and departments
- w. Apply standardized security policies such as password management
- x. Perform regularly scheduled vulnerability scans

Reporting

- y. Daily, Weekly and Monthly status reports
- z. Asset Reporting
- aa. Software Compliance

E. General Services. The following items are included with all of our managed services:

- a. Dedicated Account Team
- b. Regularly Scheduled Risk Assessments
- c. Quarterly technology review meetings
- d. 24X7 Monitoring and Alerting
- e. 24X7 Emergency Support