



## vFax Agreement

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

1. **Description of Service.** Powernet’s vFAX Service consists of virtual facsimile services via the Internet, Microsoft Outlook or from a standalone desktop client together with the products to deliver such services (collectively “Services”).
2. **Term and Changes to the Agreement.**
  - 2.1 **Term.** You agree that your obligation to pay for all Services shall commence on the date that Powernet makes the Services available (“Effective Date”). Customer’s obligation to pay for all Services shall commence on the Effective Date. The period commencing with the Effective Date and continuing for one (1) month from such date shall constitute the Initial Term. Upon the expiration of any Initial or Subsequent Term, the term will automatically renew for the succeeding term of one month (“Subsequent Term”) at Powernet’s then current rates unless a party provides thirty (30) days written notice, including through electronic means, of termination. You are purchasing the Service for the full term, meaning that if you attempt to disconnect Service prior to the end of the applicable term or Powernet terminates your Service due to your breach of this Agreement, you will be responsible for all charges relating to the then-current term, including unbilled charges, all installation costs, a disconnection fee, if applicable, all of which will immediately become due and payable. If you cancel your service prior to the Effective Date, you will be responsible to pay a cancellation recovery fee, all installation costs and any disconnection fee, if applicable.
  - 2.2 **Changes to the Agreement.** You agree that we may make changes to these Terms and Conditions at any time upon thirty (30) days written notice, including through electronic means, to you. You agree that if you use the Service after the effective date of the changes as stated in the notice, then you have accepted the new Terms and Conditions of the Service. If you do not accept the changes, then do not use the Service after the effective date and inform us in writing, including through electronic means.
3. **Charges and Rates.**
  - 3.1 **Charges for Service.** You agree to pay all the charges for your Services. Rates and charges for those Services shall be those in effect as of the Effective Date. You agree that your monthly charges are subject to change upon thirty (30) days written notice, including through electronic means, to you.
  - 3.2 **Taxes and Surcharges.** Your monthly charges do not include taxes, surcharges, access or access related charges. You agree to pay all charges for federal, state, and, where applicable, local taxes we bill you. You also agree to pay any surcharges, access fees, governmental fees and Regulatory fees that we bill you. These charges are subject to change immediately and without notice.
  - 3.3 **Billing Period.** Powernet is providing a prepaid service and will bill Customer for Monthly Recurring Charges in advance and for charges for installation and other non-recurring charges that Customer shall pay in advance of any Service being provisioned by Powernet. On the first billing for Monthly Recurring Charges, Powernet will prorate the billing from the Effective Date in addition to one month in advance.
  - 3.4 **Billing.** For each billing period, 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.

- 3.5 Porting. At Powernet's sole discretion, you may incur a port away fee for any DID number(s) leaving Powernet's network as this is a pass-through charge from Powernet's underlying carrier(s).
- 3.6 Additional Information. Due to the nature of this industry and high credit card fraud rates in securing these types of services, Powernet reserves the right to request the following documentation for verification purposes: A copy of the credit card used to establish the account along with valid photo identification, such as a Driver's License or other government issued identification.
- 3.7 Payment. All invoices are due and payable in U.S. dollars within twenty (20) days of the date on which Powernet sends the email notifying Customer that Customer's invoice is available (the "Due Date"). Customer's payment must be received on or before the Due Date in order for it not to be considered late. Restrictive endorsements or statements on checks accepted by Powernet will not be binding upon Powernet. Customer shall pay a "Returned Check Fee" of thirty dollars (\$30.00) for any check returned for insufficient funds. If payment in full of undisputed amounts is not received on or before the Due Date, Customer will be considered to have breached this Agreement and Powernet shall have the right, after three (3) business days' notice, to suspend or terminate Service and/or in Powernet's sole discretion, draw upon any security held by Powernet.
- 3.8 Late Payment. If Customer fails to remit payment in full 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. Collections. If Powernet sends your account to an outside collection agency or institutes collection proceedings against you, Powernet has the right to charge you for any collection fees.
- 3.9 Disputed Charges. Please contact us at 1-877-599-3087 if you believe that you have been charged incorrectly. You agree to submit all disputes to us within thirty (30) days of the invoice date of the invoice in question. You agree that if you do not submit your dispute before the end of the thirty (30) day period, then you shall be deemed to have waived the right to dispute the invoice. You agree to submit all disputes via a written statement containing reasonably sufficient detail together with supporting documentation to the address in Section 8. The parties will use good faith efforts to resolve the dispute within thirty (30) days from the due date of the invoice in question. If, at the end of the thirty (30) day period, the dispute is not resolved, either party may commence arbitration in accordance with Section 16 of this Agreement.
- 3.10 Adjustments. You agree that we may make billing adjustments for Services for the greater of one hundred and eighty (180) days after the date of the invoice or the date an unbilled charge was provided by Powernet or any period allowed by law, government rule or regulations.

#### 4. Customer Warranties.

- 4.1 Acceptable Use Policy. Customer shall use the Services for lawful purposes and to conduct business. Customer is responsible for adhering to Powernet's Acceptable Use Policy ("AUP") while using the Service, the terms of which are made available for viewing over the Internet at [www.powernetco.com](http://www.powernetco.com) and are incorporated by reference herein. In addition, Customer shall not use vFAX for any of the following: telemarketing, broadcast faxing, delivery of unauthorized or unsolicited advertising, promotional materials, or solicitations.
- 4.2 Indemnification. Customer shall assure that its employees, agents, contractors, licensors, customers and suppliers also abide by Powernet's AUP. Customer agrees to defend, indemnify and hold harmless Powernet, its affiliates, and contractors from any and all liabilities, costs and expense, including reasonable attorneys' fees, arising from or related to use of the Service by Customer or Customer's Users.
- 4.3 Violation of Acceptable Use Policy. Any violation of the AUP or conduct that Powernet, in its reasonable discretion, believes may subject Powernet to civil or criminal litigation or liability, charges and/or damages will be considered to be a breach of this Agreement and for which Powernet may suspend service as outlined in this Agreement. If Powernet suspends the Service pursuant to this Section, Powernet may require a reinstatement fee in order to resume Service.
- 4.4 End-User Notifications. Customer shall notify Customer's Users that by using this Service they consent to the collection and use of technical information, including but not limited to the location of the device, about the mobile telephone, computer or other device used to access the Service and related software, hardware, and

peripherals for Services that are internet-based or wireless to improve the use of products and to provide Services. Customer agrees to defend, indemnify and hold harmless Powernet, its affiliates, and contractors from any and all liabilities, costs and expense, including reasonable attorneys' fees, arising from or related to Customer's failure to properly notify Customer's Users about consent per this section.

- 4.5 **Customer Provided Equipment.** Powernet is not responsible for the installation, operation, maintenance, compatibility or performance of any third party service, software or hardware. If such third party hardware or software impairs operation of the Service, Customer remains liable for payment of all charges for the Service. Powernet shall not be held responsible or liable for any defects or failure in Customer's Service, computer, software, files, data, and peripherals or any other equipment or connectivity arising from or caused by any equipment or service which is not a part of Powernet's network.
- 4.6 **Breach of Customer Warranties.** Any breach of any of Customer's warranties pursuant to this Section 4 of this Agreement will constitute a material breach of this Agreement and Powernet may suspend or terminate the Service immediately and without notice. If Customer breaches any of its warranties, Customer will be solely liable for and will indemnify, defend and hold Powernet and its respective officers, directors, employees, contractors and agent harmless from all claims, demands, costs, damages, losses, liabilities and expenses of any nature arising from such breach, including indirect, special, incidental, consequential, punitive or reliance damages and any costs including attorneys' fees associated with enforcing any of these provisions.
5. **Termination.** Powernet reserves the right to terminate Services at any time with or without notice; especially if Customer is found to be in violation of this Agreement. You agree that Powernet shall not be liable to you or to any third party for any modification, suspensions, or discontinuation of Service.
6. **Limitation of Liability; Disclaimer of Warranties.** YOU AGREE THAT IN THE EVENT OF ANY BREACH OF THESE TERMS AND CONDITIONS OR ANY FAILURE OF THE SERVICES WHATSOEVER, NEITHER POWERNET NOR ANY OF POWERNET'S SUPPLIERS SHALL BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF POWERNET OR THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT POWERNET MAKES NO WARRANTY WITH RESPECT TO THE SERVICE OR ITS PERFORMANCE UNDER THESE TERMS AND CONDITIONS. YOU UNDERSTAND THAT POWERNET DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU UNDERSTAND THAT NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICE OR EQUIPMENT. YOU UNDERSTAND THAT WE DO NOT PROMISE ERRORFREE OR UNINTERRUPTED SERVICES AND YOU AGREE TO HOLD US HARMLESS FOR ALL SUCH PROBLEMS.
  - 6.1 **Limitations.** You agree that we are not liable for any damages arising out of or in connection with any: (i) Act or omission by you, another person or company; (ii) Failing to provide Services or problems with your Services or equipment; (iii) Accidents or any health-related claims allegedly arising from the use of the Services or any equipment; or (iv) Failure or interruption in attempting to access emergency services from the provided equipment or our Service.
  - 6.2 **Other Limitations.** This Agreement shall not limit our exclude our liability for: (i) death or personal injury resulting from our gross negligence (ii) fraud or fraudulent misrepresentation; and (iii) any other liability that cannot be excluded or limited by law.
  - 6.3 **Force Majeure.** You agree that Powernet shall not be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond Powernet's reasonable control, including, but not limited to, failure of public or private telecommunications networks or interruptions in third party services.
  - 6.4 **Damages.** If we are found to be liable to you for damages, you agree that any such damages shall not exceed the prorated Monthly Recurring Charges for your Services during the affected period.
7. **Indemnification.** You agree to defend, indemnify and hold harmless Powernet and its respective officers, directors, employees, contractors and agents against and from any loss, debt, liability, damage, obligation, claim,

demand, judgment or settlement including without limitation, attorneys' fees and all reasonable costs and expenses of litigation arising out of, resulting from or based upon any complaint, claim, action, proceeding or suit to the extent that such claim arises out of any violation of this Agreement by you.

8. **Notices**. You agree that all notices to be sent to you pursuant to this Agreement shall be in writing and sent by electronic mail ("email") to the email address associated with your account (if available), and/or US mail or private courier. You agree that any email notice shall be deemed delivered when sent and that notices sent via U.S. mail or courier shall be deemed delivered two (2) days after the date sent. You agree that all written correspondence to Powernet should be directed to Customer Service, Powernet, 8805 Governor's Hill Drive, Suite 250, Cincinnati, OH 45249.
9. **Waiver and Amendment**. You agree that the failure of Powernet to enforce any provision hereof on one or more occasions shall not constitute the permanent waiver of such provision.
10. **Choice of Law**. You agree that this Agreement shall, in all respects, be governed by and construed and enforced in accordance with the laws of the State of Ohio, without respect to the state's conflict of laws provisions. You acknowledge and agree that any action to enforce or interpret the terms of this Agreement or relating to the Services to be provided by Powernet shall be instituted and maintained only in Hamilton County, Ohio. You hereby consent to the jurisdiction and venue of such court and waive any objection to such jurisdiction and venue.
11. **Survival**. You agree that no termination of this Agreement shall affect the rights or obligations of either party with respect to payment or with respect to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, including without limitation, indemnification, limitation of liability, governing law and forum selection.
12. **Severability**. You agree that if any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then the provision shall be deemed modified to the minimum extent necessary to be valid.
13. **Assignment**. You agree that Powernet may assign its rights and duties at any time to any party without notice to you. You agree that you may not assign this Agreement without the prior written consent of Powernet.
14. **Costs and Attorneys' Fees**. You agree that if a proceeding is brought for the enforcement of this Agreement or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement or the Services, the prevailing party shall be entitled to recover reasonable attorney's fees and other reasonable costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.
15. **CLASS ACTION WAIVER**. WE EACH AGREE THAT ANY DISPUTE RESOLUTION PROCEEDING WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION.
16. **JURY TRIAL WAIVER**. If a claim proceeds in court, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL.