



DEVICE AS A SERVICE PROGRAM AGREEMENT

This Device as a Service Program Agreement is made by and between PNG Telecommunications, Inc.(d.b.a. 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 at any time. Posting of the updated Master Services Agreement will constitute notice to Customer of any such changes. Changes will be effective upon posting. Customer remains responsible for regularly reviewing these terms and conditions. Customer's continued use of the Services after the date of such changes constitutes Customer's acceptance of and agreement to such changes.

1. Agreement

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

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

1a. Description of Service

Device as a Service enables clients to rent voice equipment ("Rental") from Powernet at an affordable monthly rate. This rental service is continuous until the equipment is returned to Powernet. Equipment may be exchanged for other equipment under the same program with a new, signed agreement. This service is applicable to Poly and Yealink phones, and Jabra Headsets resold by Powernet.

2. Term

This MSA shall become effective on the date a Service Order is fully executed by both Powernet and Customer and shall continue until terminated as specified in 2.B.

- A. Service Schedule and Service Order Term. Notwithstanding anything else in this MSA, each Service Schedule or Service Order placed under this MSA shall have its own term and the terms of this MSA shall continue to govern the parties' duties and rights with respect to such Service Schedule or Service Order until the expiration of its term or any succeeding term or unless the Service Schedule or Service Order is terminated as permitted by this MSA.
- B. Term of Rental. The term of the Rental as to the equipment specified within the signed service order shall begin on the Installation date and shall continue for an initial period of months from the Commencement date (the first day of the month following the Installation date, unless the installation date occurs on the first day of a month, in which case the Commencement date will be the Installation Date).

The Rental is a non-cancelable rental and will not terminate in the event of any damage to or destruction of the equipment. The Rental may be terminated only as expressly provided herein. To the extent permitted by law, Customer waives the right to (1) cancel the rental; (2) repudiate the rental; (3) revoke acceptance of the equipment; (4) recover damages from Powernet for any breaches of warranty or for

any other reasons; (5) grant security interest in the equipment to a third party; (6) deduct from rents all or any part of claimed damages resulting from Company's default, if any.

Customer may terminate the Rental at the expiration of the initial term by giving Powernet at least one (1) month prior written notice of termination. If neither party gives such notice, then the term shall be automatically extended on the same rental terms for successive periods of (1) month until terminated by either the Customer or Powernet giving the other at least one (1) month written notice of termination.

3. Ordering Service

All Services shall be ordered on Powernet 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. Customer grants to Powernet the right to provide certain network and telecommunications equipment and service at Customer's location(s), specified on customer proposal, Service Order and/or Scope of Work.

- A. Customer Changes to Service Orders. Any terms and conditions contained in a Service Order submitted by Customer that conflict with the terms and conditions in this MSA or any Service Schedule are hereby objected to by Powernet and shall not constitute part of the agreement unless explicitly accepted by Powernet in writing. No action by Powernet (including, without limitation, provision of Services to Customer pursuant to such Service Order) shall be construed as binding or estopping Powernet with respect to such terms or conditions.
- B. Cancellation Fee. If Customer cancels any Service Order or this Agreement after the Service has been ordered but prior to Powernet notifying Customer that Service is available, the 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

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

- A. Charge Conditions. All charges are based on the following conditions and reservation of rights by Powernet:
 - a. The Services may only be used for Customer or Authorized User communications.
 - b. Powernet reserves the right, at any time upon fourteen (14) days notice, to; (i) pass through to Customer, all or a portion of, any charges or surcharges, directly or indirectly, related to the action

of any federal, state or governmental agency, Powernet may adjust its charges, or impose additional charges, in order to recover amounts it may be required by governmental or quasi governmental authorities to collect from, or pay to others, to support statutory or regulatory programs during the course of the Agreement.

- B. Taxes. All charges for Service are net of Applicable Taxes (as defined below). Except for taxes based on Powernet's net income, Customer will be responsible for all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated, imposed on, incident to, or based upon the provision, sale or use of the Services (collectively "Applicable Taxes"). If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Powernet with a valid exemption certificate (in a form reasonably acceptable to Powernet) and Powernet will give effect to any such exemption prospectively. Customer agrees to indemnify, defend and hold harmless Powernet from any liability or expense associated with Applicable Taxes.

5. Billing and Payment

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

- A. Billing. Powernet will bill Customer based upon the terms set forth on the Service Order(s). Powernet will send to Customer, via email, a notice that Powernet has prepared Customer's invoice and that Customer may log on to Powernet's web based Customer Portal at <https://portal.pngcom.com> to view the invoice.
- B. Payment. All undisputed amounts stated on each invoice are due and payable in U.S. dollars within seven (7) calendar days of the date on which Powernet sends the email notifying Customer that Customer's invoice is available (the "Due Date"). Customer will remit all payments via Automated Clearinghouse ("ACH") or wire transfer to PNG Telecommunications, Inc. in care of Fifth Third Bank, Cincinnati, Ohio, ABA #042000314, Account #07020828377 or such other bank account as Powernet may in writing direct Customer to remit payment pursuant to the notice provisions of this Agreement. Restrictive endorsements or statements on checks accepted by Powernet will not be binding upon Powernet.
- C. Late Payment. If Customer fails to remit payment of all undisputed amounts by the Due Date, Powernet, in addition to other remedies available to it under this Agreement or at law, may charge Customer a late fee of the lesser of 1.5% per month or the maximum fee allowed by law of the unpaid balance which shall accrue from the Due Date of the invoice.
- D. Adjustments. Powernet may make billing adjustments for Services for one hundred and eighty (180) days after the date of the invoice or after the date of the Service for Services provided by Powernet or for the lesser of one hundred and eighty (180) days or any period allowed by law, government rule or regulation or contract.
- E. Billing Disputes. Customer shall submit all disputes to Powernet within thirty (30) days of the date of the invoice in question. If Customer does not submit its dispute before the end of the thirty (30) day period, then Customer waives the right to dispute the charges. Customer will submit all disputes via a written statement containing reasonably sufficient detail together with supporting documentation. Both parties shall use good faith efforts to resolve the dispute within forty-five (45) days from the Due Date of the invoice in question. At the end of the forty-five (45) day period, or after Powernet makes a decision on the dispute, whichever comes first, either party may file to immediately commence arbitration in accordance

with Section 9.7.2 of this Agreement. Once Powernet makes a decision on the dispute the disputed amount shall be due or credited on the next invoice. Notwithstanding the foregoing, Powernet may disclose Customer Proprietary Network Information to any agent of Customer to initiate or provide Services and bill or collect for the Services

- F. Credit and Assurance of Payment. Maintenance of acceptable credit and adequate assurance of payment, both as determined by Powernet in its discretion, are the 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. Equipment.

- A. Powernet may provide Managed Networking Equipment in support of the provision of Customer's Voice Hardware, and Powernet grants Customer a non-exclusive, non-transferable limited license to use the Networking equipment (Equipment") in accordance with this Supplement.
- B. Customer agrees that Powernet shall not be liable for damages, including special, incidental, indirect or consequential damages, arising out of or in connection with the performance of the equipment or the use there of by Customer and shall not be liable for any special incidental or consequential damages, arising out of or in connection with Powernet's failure to perform its obligations hereunder. Upon written request from the customer, Powernet shall take all reasonable action requested by customer to enforce any manufacturer's warranty express or implied, relating to the condition or performance of the equipment which is enforceable by Company in its own name, provided however, that Powernet shall not be obligated to resort to litigation to enforce any such warranty. Similarly, if any such warranty shall be enforceable by the Customer in its own name, Customer shall take reasonable action requested by Powernet to enforce any such warranty. Customer shall indemnify and hold Powernet and its assigns harmless from any liability, claim, loss, damage or expense (including reasonable attorneys' fees) of any kind or nature caused, directly or indirectly by (1) inadequacy of any Equipment for any purpose, (2) any deficiency or defect in any Equipment, (3) the use or performance of any Equipment, (4) any interruption or loss of service, use or performance of any Equipment, (5) any patent, copyright, or other infringement, or (6) any loss of business or other consequential damage whether or not resulting directly from any or all of the above.
- C. Customer authorizes Powernet to provide the Equipment and agrees that the Powernet does not grant the Customer any rights to the Equipment except as expressly set forth herein. Customer agrees to give Powernet access during regular business hours, or at any time in the event of an emergency, to service or remove the Equipment at Powernet's sole discretion. Loss, theft or physical damage of any kind to the Equipment is the Customer's responsibility. It is the responsibility of the Customer maintain the Equipment in good working order and appearance.
- D. Customer assumes and shall bear the entire risk of partial or complete loss, theft, damage, destruction, or other interruption or termination of use of the Equipment from any cause whatsoever, from the date of delivery of the Equipment to Customer until the Equipment is returned to and received by Powernet. In the event of any form of loss, theft, or physical damage to the equipment, Customer is responsible for all repair and replacement costs as determined by Powernet. If equipment is deemed lost, stolen or destroyed beyond repair, Customer shall pay Powernet on the next monthly rental payment date following the loss, theft or destruction of the equipment an amount equal to the replacement value (as determined by Powernet). Customer shall carry insurance for an amount equal to its replacement cost to insure against all risks of loss or damage, including unplanned circumstances not at the fault of the customer, i.e. force majeure.

- E. Upon termination of the Rental, Customer, at its sole expense, shall return the equipment, together with manufacturer's certificate of authenticity, if provided, to Powernet, or to such other location within the Continental U.S. designated by Powernet, in good working condition and repair excepting only reasonable wear and tear, and eligible for a manufacturer's standard, full service maintenance contract. If the Equipment returned is not so eligible, Customer shall reimburse Powernet for the cost of qualifying the Equipment for such maintenance contract eligibility. Customer shall pack the Equipment to be so returned in accordance with the manufacturer's guidelines. If customer fails to return the Equipment accordingly upon termination, Customer shall be obligated to pay to Powernet per diem rent until the Equipment is returned in addition to all other remedies available to Powernet.
- F. If Customer requests that Powemet remove the Equipment, Customer will be charged "Equipment Removal fee" based on the number of pieces of hardware to be removed and Powernet resources required for the removal. In the event that Powernet removes the equipment, Customer is expected to provide all necessary items as mentioned in 6.E. The Equipment removal fees will appear on the Customer's next Powernet invoice.
- G. Customer may make reasonable alterations or attachments to the Equipment and software in line with its business needs, except that Customer shall not make any such alteration that would create a safety hazard, impair or reduce the performance of the Equipment. If the alterations or attachments interfere with the normal or satisfactory maintenance, operation or insurability of the Equipment, or any part thereof, in such manner as to materially decrease the value of the Equipment, or create a safety hazard, Customer will, upon written notice from Company to that effect, promptly remove the alterations or attachments and restore the Equipment to its normal condition. In the case of increased cost of maintenance and insurance, or either, due to Customer's alterations or attachments permitted herein, Customer shall pay such increase.
- H. Customer agrees to keep the Equipment at the location stated in the service order, and will not be removed therefrom, without prior written notification to Powernet. Customer will not use the Equipment for any purpose other than which it was designed and in accordance with the manufacturer's specification.
- I. Powernet shall retain the right to affix to the Equipment and each unit or element thereof, in a prominent place, appropriate tags, decals, or plates stating that the Equipment is owned by Powernet or its partners, and Customer shall not cause or permit any such tags, decals, or plates to be removed, defaced or covered in any way.

7. Support and Repair Processes

- A. Technical Support for Device as a Service will be provided through the Powernet support team. The service desk is available 24/7 and provides the applicable support required for this service.
- B. Customer will be supplied with a Trouble Reporting Guide and Local Escalations upon activation.

8. Suspension and Termination

- A. Of Service/Service Orders/Agreement for Nonpayment. Except for amounts properly disputed by Customer, if payment in full is not received from Customer on or before the Due Date, Powernet shall have the right, after three (3) business days notice, to do any or all of the following: (i) suspend or terminate Service to Customer; (ii) suspend or terminate any or all Service Orders including any pending Service Orders or (iii) terminate this Agreement.

- B. Of 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 remedy.
- C. 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.
- D. Early Termination Liability. If this Agreement, Service Order or any Service is terminated by Customer before the expiration of the initial or any subsequent term, except as otherwise specifically allowed, or if Powernet terminates this Agreement or any Service for Customer's uncured material breach, Customer shall pay to Powernet an amount equal to the sum of
 - a. A termination charge equal to all remaining amounts due or to become due, including but not limited to all monthly charges for which Customer would have been responsible if Customer had not terminated prior to the expiration of then-current Term.
 - b. Customer may also be obligated to pay Equipment Non-Return or Equipment removal fees.
 - c. 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.
- E. Disconnect Request by Customer. All Disconnections of service must be emailed or written on Customer letterhead with the appropriate service(s) and/or account information detailed to Service Management, servicemanagement@powernetco.com or mailed to the address located in the Notice section of this Agreement. Service(s) will be disconnected thirty business (30) days from the date received by Service management.

9. Limitation of Liability and Disclaimer of Warranties

IN THE EVENT OF ANY BREACH OF THIS AGREEMENT OR ANY FAILURE OF THE SERVICES WHATSOEVER, NEITHER POWERNET NOR ANY OF POWERNET'S SUPPLIERS SHALL BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, INCIDENTAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, EVEN IF POWERNET OR THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORSEEABLE.

- A. Disclaimer of Warranties. POWERNET MAKES NO WARRANTY WITH RESPECT TO THE SERVICE OR EQUIPMENT OR ITS PERFORMANCE UNDER THIS AGREEMENT OR THE ATTACHED SERVICE SCHEDULES WITH THE EXCEPTION OF ANY ATTACHED SERVICE LEVEL AGREEMENTS. POWERNET DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY SERVICE OR EQUIPMENT.
- B. Force Majeure. Neither party shall be liable, other than for any delay or failure in an obligation to pay money, nor shall any credit allowance or other remedy be extended, for any delay or failure of performance or equipment due to causes beyond such party's reasonable control whether foreseen or unforeseen. Acts and events deemed to be Force Majeure Events include but are not limited to: act of God, fire, flood, labor strike, sabotage, fiber cut, material shortages or unavailability or other delay in

delivery not resulting from the responsible Party's failure to timely place orders therefore, war or civil disorder, earthquake, hurricane, tornado or terrorist act. The Party claiming relief under this Section shall notify the other in writing of the existence of the Force Majeure Event and shall be excused on a day-by-day basis to the extent of such prevention, restriction or interference until the cessation of such Force Majeure Event. In the event Powernet is unable to deliver Service as a result of a Force Majeure Event, Customer shall not be obligated to pay Powernet for the affected Service for so long as Powernet is unable to deliver.

10. Indemnification

Each Party shall defend and indemnify the other and their respective officers, directors, employees, suppliers, licensors, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation, all reasonable costs and expenses incurred including all reasonable litigation costs and attorneys' fees arising out of or relating to claims, complaint, action, proceeding or suit of a third party (including any investigation by a governmental agency or authority), that arise or relate in whole or part to the gross negligence or willful misconduct of the indemnifying Party, its employees, agents, contractors, licensors or suppliers.

- A. Customer Indemnification. Customer shall defend and indemnify Powernet and their respective officers, directors, employees, suppliers, licensors, contractors and agents against and from any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation, all reasonable costs and expenses incurred including all reasonable litigation costs and attorneys' fees arising out of or relating to claims, complaint, action, proceeding or suit of a third party (including any investigation by a governmental agency or authority), that arise or relate in whole or part to (i) Customer's breach of this Agreement, (ii) Customer's employees', agents', contractors', licensors', customers' or suppliers' unauthorized, illegal or fraudulent use of the Services or use of the Services in breach of the AUP.
- B. Procedure for Indemnification. The indemnified party promptly shall notify the indemnifying party of any claims that are subject to indemnification. The indemnified party shall have the right, at its own expense, to participate either directly or through counsel in any litigation or settlement negotiations. The indemnified party shall provide reasonable assistance and cooperation in such defense at the indemnifying party's expense. The indemnifying party shall not agree to any settlement without the written consent of the indemnified party and such consent shall not be unreasonably withheld. The indemnification provided herein shall survive the termination of this Agreement.

11. Miscellaneous

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

- A. Relationship. This Agreement establishes an independent contractor relationship between us. Neither Powernet nor our employees shall be considered your employees under the meaning or application of any state or federal unemployment, insurance or workers compensation laws and we assume all responsibilities imposed by such laws with respect to our employees. Neither of us shall have any authority to represent itself as an agent, employee or representative of the other nor to assume or create any express or implied obligation on behalf of the other.

- B. Partner. Powernet may, at any time and without notice, partner with one or more providers to fulfill its obligations under this agreement
- C. Proprietary Information. Each party agrees to maintain in strict confidence the terms and conditions, including pricing, contained in this Agreement or in any Service Order and all plans, designs, drawings, trade secrets, business and other proprietary information of the other party which is disclosed pursuant to this Agreement. Neither party shall disclose to any third party such confidential information without the express written consent of the other party. No obligation of confidentiality shall apply to disclosed information which the recipient (i) already possessed without obligation of confidentiality, or (ii) develops independently, or (iii) rightfully receives without obligation of confidentiality from a third party, or (iv) must disclose due to reasons prescribed by law or due to court or official orders. The recipient shall immediately notify the other party of any disclosures made pursuant to this Section 9.4. Each party acknowledges that a breach or threatened breach of this Section may cause irreparable harm, which cannot be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the Party that threatened to make or made the unauthorized disclosure consents to equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in addition to any other remedies that the Party to which the Proprietary Information belongs is entitled.
- D. Employee Solicitations. Customer acknowledges that Powernet is involved in a highly strategic and competitive business. Customer further acknowledges that Customer would gain substantial benefit and that Powernet would be deprived of such benefit, if Customer were to directly hire any personnel employed by Powernet. Except as otherwise provided by law, Customer shall not, without the prior written consent of Powernet, solicit the employment of Powernet personnel or induce any Powernet personnel to leave to go to another firm during the term of this Agreement and for a period of two (2) years following the termination or expiration of this Agreement. Customer agrees that Powernet damages resulting from breach by Customer of this provision would be impracticable and that it would be extremely difficult to ascertain the actual amount of damages. Therefore, in the event Customer violates this provision, Customer shall immediately pay Powernet an amount equal to US \$50,000 as liquidated damages and Powernet shall have the option to terminate this Agreement without further notice or liability to Customer. The amount of the liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs Powernet would incur to identify, recruit, hire and train suitable replacements for such personnel.
- E. Notices. All notices to be sent to a party pursuant to this Agreement shall be in writing and sent by (i) email effective when sent, (ii) private courier, effective upon delivery (iii) express mail priority next day delivery, effective one business day after deposit with the service or (iv) confirmed facsimile sent during business hours effective the same day when sent, receipt confirmed by sender's equipment. The address for notice to Powernet is below and the Customer's is contained in the Service Order.

For service and account management issues:

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

For legal issues:

Attn: Legal Department

Fax: (513) 645-4960
Email: legal@powernetco.com

- F. Notices Disputes. The Parties desire to resolve disputes arising out of or relating to this Agreement without litigation.
- G. Arbitration. Except for an action seeking a temporary restraining order or an injunction relating to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures as the sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach. At the written request of either Party, each Party will appoint a knowledgeable representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The representatives shall have the discretion to determine the location, format, frequency and duration of their negotiations, and to utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. All discussions and correspondence among the representatives shall be treated as confidential information developed for the purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the agreement of the Parties. If the negotiations do not resolve the dispute within forty-five (45) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator experienced in the matters at issue and selected by the Parties in accordance with the rules of the American Arbitration Association (“AAA”). The parties acknowledge that this Agreement is made pursuant to a transaction in interstate commerce, and that any arbitration will be governed by the Federal Arbitration Act, 9 U.S.C. sec. 1, et seq. Any court with jurisdiction may enter judgment upon the award rendered by the arbitrator. The arbitration will be held in Hamilton County, Ohio. The Parties agree that the arbitration shall proceed *ex-parte* in the event that a Party, after being duly notified refuses to participate in the arbitration. The prevailing party shall be entitled to reasonable costs and attorney’s fees.
- H. Waiver and Amendment. The failure of either party to enforce any provision hereof on one or more occasions shall not constitute the permanent waiver of such provision. Any addition, deletion or modification to this Agreement shall not be binding on either party except by written amendment executed by both parties.
- I. Interpretation. No rule of construction requiring interpretation against the draftsman hereof shall apply in the interpretation of this Agreement.
- J. Choice of Law. This Agreement shall, in all respects, be governed by, construed and enforced in accordance with the laws of the State of Ohio, without respect to the state’s conflict of laws provisions. For valuable consideration, both parties acknowledge and agree that any action to enforce or interpret the terms of this Agreement or relating to the Services to be provided by Powernet shall be instituted and maintained only in Hamilton County, Ohio. Customer hereby consents to the jurisdiction and venue of such court, and waives any objection to such jurisdiction and venue.
- K. In the case of a suit to collect past due payments, the Parties agree that Powernet may, in its sole discretion, bring suit in the courts of any jurisdiction where Customer does business or has assets, and Customer hereby consents to such jurisdiction. If Powernet sends Customer’s account to an outside collection agency or institutes collection proceedings against Customer, Powernet has the right to charge Customer for any collection fees.
- L. Integration. This Agreement and Service Orders supersede and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities and covenants, and all inducements to the making of this Agreement whether written or oral or whether made before execution of this Agreement.
- M. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.

- N. Survival. No termination of this Agreement shall affect the rights or obligations of either party with respect to payment or with respect to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, including without limitation, indemnification, limitation of liability, confidentiality, governing law and forum selection.
- O. Severability. If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then the provision shall be deemed modified to the minimum extent necessary to be valid.
- P. Assignment. Customer shall not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Powernet, which shall not be unreasonably withheld. Customer must be current on all payments required by this Agreement before any assignment is approved by Powernet. Any such assignment or transfer of Customer's rights or obligations without such consent shall constitute a default of a material obligation.
- Q. Costs and 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.