



Powernet Wireless Residential Terms and Conditions

Please read this Agreement carefully before using your Wireless Service. By using the Service you agree to be bound by these terms and conditions.

IF YOU DO NOT WANT TO ACCEPT THESE TERMS AND CONDITIONS, DO NOT USE YOUR WIRELESS DEVICE. You may cancel your Service if you inform us in writing or by calling us at 1-877-599-3087 and returning to us in unused condition any wireless device you received from us within fourteen (14) days of delivery. Please see below Section 7.d., Returns.

This is an agreement (“Agreement”) for wireless telecommunications services and related services and/or features (“Service”) between you and PNG Telecommunications, Inc. (“Powernet”). The words “we”, “us”, or “our” refers to Powernet. You represent that you are at least eighteen (18) years of age and have the legal capacity to accept this Agreement. This Agreement explains the terms and conditions upon which we agree to provide you Service or products and you agree to accept any Service or products provided by us.

1. **Changes to the Agreement. We may make changes to this Agreement, Calling Plan or Service at any time upon thirty (30) days written notice to you.** If you use the Service after the effective date of the changes as stated in the notice, then you have accepted the new terms, rates 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 or call us at 1-877-599-3087 to cancel your Service.
2. **Activating your Service.** Prior to activating your Service, we may check your credit and verify your identity. Your wireless Service is subject to credit approval prior to activating your Service and continuing credit approval while you are using our Service. You agree to provide us with accurate billing information, including your name, home address and telephone number. You must report any changes to this information to us within thirty (30) days of any change. You may be required to make a prepayment on your account if your credit has not been established to our satisfaction or if your credit or payment history becomes unsatisfactory to us. If you fail to provide the requested prepayment within two (2) business days of our request, you will be deemed in breach of your obligations under this Agreement and shall entitle Powernet to suspend or terminate your Service immediately and without notice pursuant to Section 10.
3. **Charges and Rates for Service.**
 - a. **Calling Plan charges. You agree to pay the monthly access charges, airtime charges, long distance charges, roaming fees, data charges, SMS charges, MMS charges, taxes, surcharges and any other applicable fees for Services you used.** Your rates and charges are based on the Calling Plan, Data Plan, Texting Plan and/or Bundling Plan (collectively “Calling Plan”) that you choose. There is no service term, therefore, your Calling Plan will continue on a month-to-month basis. Read your Calling Plan carefully. Your Calling Plan describes your monthly access charge, the number of minutes included in your airtime monthly allowance, the number of megabytes included for data, the number of messages included for SMS, and the rate per minute for additional minutes, the rate per megabyte for additional data usage, the rate per message for additional SMS and MMS usage, long distance and roaming fees. You are considered to be roaming and subject to a roaming charge whenever a call you make or receive, a SMS or MMS message you send or receive, or data service you use, is carried by another carrier. Your Calling Plan may have different rates for weekdays and nights. **Any calls made between the hours of 7:00 p.m. and 6:59 a.m. on any Monday through Thursday are considered night or offpeak minutes. Any calls made between the hours of 7:00 p.m. Friday through 6:59 a.m. Monday are considered weekend minutes or offpeak minutes. All other calls are considered to be using peak minutes. We charge airtime for most calls, including toll free and operator assisted calls. International calls are not included in any Calling Plan. All international calls will incur airtime charges and international per minute fees.** For international calling rates, contact us at 1-877-599-3087. **You agree to pay for all additional airtime charges, roaming fees, long distance fees, international calling fees, SMS charges, MMS charges, Data charges and other fees that are not included in your Calling Plan.**

- b. **Additional features and Service charges.** Additional features or Services such as time, weather, operator or directory assistance, call dialing, calling card use, call forwarding, data calls, automatic call delivery, voice mail, and text messaging, including premium SMS messaging, may have additional charges. **You agree to pay any such additional charges at our then current rates.**
- c. **Taxes and Surcharges.** **You agree to pay all charges for federal, state, and where applicable local taxes we bill you. These may change from time to time without notice to you. You also agree to pay any surcharges, access fees, governmental fees and similar fees such as fees for Universal Service and other Regulatory and Administrative fees that we bill you. We set these charges and they are not taxes. We may change these charges at any time or add additional types of these charges.**

4. **Billing.**

- a. **Bill Cycle.** **You will be billed monthly, generally beginning when your Service began.** Billing cycles may change from time to time without notice. Monthly access charges and fees are usually invoiced one billing cycle in advance. Other charges such as any airtime charges or any other chargeable time are generally invoiced soon after they are incurred. In some instances they may be applied against your airtime allowance in a subsequent billing cycle. Unused airtime minutes cannot be carried forward or credited on the next monthly bill.
- b. **First Bill.** Your first bill, among other things, may contain the following:
 - i. The price of your equipment and, if applicable, accessory purchase;
 - ii. The sales tax amount from your equipment and accessory purchase;
 - iii. The monthly access fee for the next bill cycle and possibly a prorated amount for the current month.
- c. **Chargeable time.** Your chargeable time starts when you first press “Send” or the call connects to the system. Chargeable time stops when your call disconnects from the system, which will be shortly after you press “End” or the call is otherwise terminated. Partial minutes of use are rounded up to the next minute.
- d. **Payment.** You agree to pay all access, usage, and similar charges and surcharges we bill you, even if you were not the user of your wireless phone and did not authorize its use. Payment is due in full in U.S. dollars by the due date as stated on your bill. If you agree to pay your bill by an automatic withdrawal from a banking institution or credit account, we may request payment from the account for the full invoice amount without additional authorization from you. An additional fee may be imposed for certain methods of payment. If we do not receive your payment in full by the due date, we may charge you a late fee of the lesser of one and one half percent (1 ½%) per month or the maximum fee allowed by law of the unpaid balance. We may charge you a fee up to the maximum allowed by your state if a payment is denied by a financial institution. Restrictive endorsements or statements on checks accepted by Powernet will not be binding upon Powernet.
- e. **Nonpayment and suspension and reactivation charges.** If your bill is not paid in full by the due date, we may immediately and without notice suspend or terminate your Service pursuant to Section 10. If your Service is terminated and later reactivated, we may charge a reactivation fee.
- f. **Disputed charges.** Please contact us at 1-877-599-3087 if you believe that you have been charged incorrectly. You shall submit all disputes to us within thirty (30) days of the date of the invoice in question. 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. Customer will submit all disputes via a written statement containing reasonably sufficient detail together with supporting documentation. Both 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, the parties agree to immediately commence arbitration in accordance with Section 14 of this Agreement.
- g. **Adjustments.** Powernet may make billing adjustments for Wireless Services for one hundred and eighty (180) days after the date of the invoice for Wireless Services provided by Powernet or for the lesser of one hundred and eighty (180) days or any period allowed by law, government rule or regulation, or contract.

5. **Use of Service.**

- a. **No abuse.** You agree not to use our Service in an abusive, unlawful or fraudulent manner. You may not resell or lease Services to anyone. You are responsible for all use of our Services and charges incurred by your wireless device including but not limited to the use by children or minors. If we suspect that you are using the Service in an

abusive, unlawful or fraudulent manner, or in a manner that has an adverse impact on Powernet's network, operations or customers, we may immediately and without notice suspend or terminate your Service pursuant to Section 10. Abusive use shall also include if your use of unlimited airtime minutes in any one month is unreasonably excessive. Such abuse will allow Powernet to either to move your account to another plan, charge you an additional monthly recurring charge or terminate your service without notice.

- b. **Lost or stolen devices.** If your wireless device is lost or stolen, call us immediately at 1-877-599-3087. You are responsible for all charges incurred before you notify us of the loss or theft. You agree to cooperate with any and all investigations regarding the loss or theft.

6. **Coverage.** Coverage is not available everywhere, nor can we guarantee you will receive coverage at all times, or without interruptions or delays. Actual coverage and quality of Service may be affected by conditions beyond our control including but not limited to network problems, software, signal strength, your equipment, structures (including buildings in which you may be located), atmospheric and geographic conditions. Continuation of Wireless Service is contingent upon the availability of the provision of Wireless Service by third parties. You can view coverage maps at <http://www.powernetco.com/coveragemaps.php>.

7. **Equipment.**

- a. **Pricing.** Equipment is provided to Customer at Powernet's current pricing and is subject to availability.
- b. **Shipping.** Equipment will be shipped to the address designated at the time of the order. Title and risk of loss pass to Customer and acceptance occurs upon receipt of the Equipment by Customer or Customer's agent at the address designated on Customer's order. Powernet may charge Customer for shipping.
- c. **Package Shipping Damage or Evidence of Tampering.** If you find damage or tampering to your package after accepting delivery and the damage or tampering was not obvious at the time of delivery, you must report this to us by calling us at 1-877-599-3087 within forty-eight (48) hours of accepting delivery in order to return the package.
- d. **Returns.** You may terminate your Service and return your Powernet provided wireless device or accessory for any reason for a refund within fourteen (14) days of delivery of your wireless device or accessory. You remain obligated to pay the pro-rated monthly access and usage charges, all fees, taxes and surcharges that were incurred prior to the termination date. In order to cancel your service and return your wireless device for a refund you must cancel within fourteen (14) days of delivery of your wireless device by calling us at 1-877-599-3087 for return authorization and return instructions. You must then immediately return the wireless device as instructed by us in the original box with the original packing slip, tray and all of the parts included. The wireless device, equipment and box must be in like new condition with no more than thirty (30) minutes of use. Any wireless device or equipment subjected to neglect, misuse, water damage, or wear and tear may not be returned for credit. Unless the wireless device is returned in this manner and within the time frame required, a full refund will not be given to you. For information regarding return of your product, call us at 1-877-599-3087.
- e. **Defective equipment.** Wireless devices that become defective during the manufacturer's warranty period after purchase may be returned to the manufacturer for repair or replacement. Wireless devices subjected to neglect, misuse, or water damage may not be returned under the manufacturer's warranty. It is in the manufacturer's sole discretion whether or not to replace or repair your wireless device. If the wireless device is replaced, it may be replaced with a refurbished wireless device. Powernet purchased accessories may only be returned as defective if the accessories are defective immediately out of the box and returned within fourteen (14) days of purchase from Powernet. For information regarding return of your product or more specific information about returned products, call us at 1-877-599-3087.
- f. **Equipment not provided by Powernet.** Customer may not use equipment provided by a third party.
- g. **Equipment Modifications.** If Customer on its own or through a third party, adds, changes, integrates or uses hardware or software to or with the Equipment ("Modifications"), then Powernet shall not be responsible for defects, malfunctions, repair, replacement or claims resulting from such Modifications. Customer may be responsible for any increased usage and charges resulting from such Modifications. Customer shall defend, indemnify and hold harmless Powernet from and against any and all losses and damages claimed by a third party in any action or proceeding against Powernet arising from any Modifications or from Customer's illegal or unauthorized use of the Wireless Service or Equipment.

8. **Limitation of Liability.**

- a. **Wireless devices and accessories.** We are not responsible for any defects or for the acts or omissions of the manufacturer. We will pass all manufacturer's warranties on your devices and accessories directly to you. Your device may not accept Service from any other provider.
- b. **Local Number Porting.** You may elect to port an existing Telephone Number ("TN") to Powernet for use with the Wireless Service. Powernet will support all valid requests and will cooperate with you to port any TNs in accordance with Powernet's standard operating procedures. You hereby represent and warrant to Powernet that you have all necessary rights and authority necessary to port any TNs and you hereby agree to indemnify, defend, and hold harmless Powernet, its Affiliates, and their officers, directors, employees and agents from and against any third party claim related to or arising out of any porting.

9. **Limitation of Liability; Disclaimer of Warranties. IN THE EVENT OF ANY BREACH OF THIS AGREEMENT OR ANY FAILURE OF THE WIRELESS SERVICES OR EQUIPMENT 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, CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT, USE OF THE EQUIPMENT BY YOU, THE MANUFACTURER OF THE EQUIPMENT, ANY REPAIR OR WIRELESS SERVICE OF THE EQUIPMENT BY CUSTOMER OR A THIRD PARTY, ANY MODIFICATIONS OR BY ANY INTERRUPTION OF WIRELESS SERVICE OR LOSS OF USE OF THE EQUIPMENT, EVEN IF POWERNET OR THE SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL POWERNET OR ITS VENDORS BE LIABLE FOR LOSSES, DAMAGES, CLAIMS OR EXPENSES OF ANY KIND ARISING OUT OF THE USE, ATTEMPTED USE, OR INABILITY TO ACCESS LIFE SUPPORT OR MONITORING SYSTEMS OR DEVICES, 911 OR E911, OR OTHER EMERGENCY CALL OR SERVICE. POWERNET MAKES NO WARRANTY WITH RESPECT TO THE WIRELESS SERVICE, EQUIPMENT OR THE WIRELESS SERVICE OR EQUIPMENT'S PERFORMANCE UNDER THIS AGREEMENT. POWERNET DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICES OR WIRELESS DEVICE. WE DO NOT PROMISE ERROR-FREE OR UNINTERRUPTED SERVICES AND YOU AGREE TO HOLD US HARMLESS FOR ALL SUCH PROBLEMS. WE DO NOT AUTHORIZE YOU TO MAKE ANY WARRANTIES ON OUR BEHALF. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY THIRD PARTY WIRELESS SERVICE OR EQUIPMENT. WITH RESPECT TO THE EQUIPMENT, CUSTOMER PURCHASES THE EQUIPMENT "AS IS." EQUIPMENT SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED TO CUSTOMER BY THE EQUIPMENT MANUFACTURER. MODIFICATIONS MAY VOID OR OTHERWISE LIMIT ANY WARRANTY APPLICABLE TO THE EQUIPMENT.**

- a. **Limitations.** 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 wireless device;
 - iii. Accidents or any health-related claims allegedly arising from the use of the devices or any wireless device; or
 - iv. Failure or interruption in attempting to access emergency services from your wireless device.
- b. **Force Majeure.** 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.
- c. **Damages.** If we are found to be liable to you for damages, you agree that any such damages shall not exceed the pro-rated monthly recurring charge for your Services during the affected period.

10. **Termination of Service.** We may terminate your Service as described in Sections 5(a) and 4(e) in this Agreement immediately and without notice to you (i.e. if we suspect fraud, abuse or unlawful activity or nonpayment of charges when due). We may terminate your Service and/or suspend your Service for any other breach of this Agreement or for any other business or governmental reason with notice to you. You may terminate your Service at any time with prior notice to us. To notify us of your termination, please call us at 1-877-599-3087. If any Service is terminated before the end of your current billing cycle, for any reason, we will prorate the monthly access and usage charges to the date of termination.

11. **Enhancement of Wireless Service.** Customer shall obtain Powernet's prior approval and written agreement before it may install, deploy or use any regeneration equipment or similar mechanism to originate, amplify, enhance, retransmit or

regenerate Wireless Service. Powernet may terminate service or this Agreement and pursue all remedies available to Powernet for any violation of this section.

12. **Indemnification.** You will defend, indemnify and hold harmless Powernet and its respective officers, directors, employees, suppliers, 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 is from or in any way connected with any claims from Customer's use of the Wireless Services or Equipment including any unauthorized or illegal provision or use by Customer or someone else using the Wireless Service with Customer's Equipment, or any violation of this Agreement by you.
13. **Notices.** 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. Any email notice shall be deemed delivered when sent. Notices sent via U.S. mail or courier shall be deemed delivered two (2) days after the date sent.
14. **Arbitration.** The Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Therefore, except for 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 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.
15. **Waiver and Amendment.** The failure of Powernet to enforce any provision hereof on one or more occasions shall not constitute the permanent waiver of such provision.
16. **Choice of Law.** 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.
17. **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, governing law and forum selection.
18. **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.
19. **Assignment.** Powernet may assign its rights and duties at any time to any party without notice to you. You may not assign this Agreement without the prior written consent of Powernet.
20. **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.