

PowerNet Mobile 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 1-866-200-5200 and returning to us in unused condition any wireless device you received from us within fourteen (14) days of delivery. Please see below Section 11>Returns.

This is an agreement ("Agreement") for wireless telecommunications services and related services and/or features ("Service") between you and PowerNet Global Communications ("PowerNet"). The words "we", "us", "our" or "PowerNet" refers to PowerNet Global Communications. 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 1-866-200-5200 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. Upon activation of your Service, you will be charged a nonrefundable activation fee. This fee will be on your first monthly invoice. Please see below Section 4(b) First Bill.
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, taxes, surcharges and any other applicable fees for Services you used.** Your rates, charges and credits are based on the Calling Plan and/or Bundling Plan that you chose. 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, and the rate per minute for additional minutes, long distance and roaming fees. You are considered to be roaming and subject to a roaming charge whenever you make or receive calls out of your home area. Your Calling Plan may have different rates for weekdays and nights. **Any calls made between the hours of 9:00 p.m. and 7:00 a.m. on any Monday through Thursday are considered night or nonpeak minutes. Any calls made between the hours of 9:00 p.m. Friday through 7:00 a.m. Monday are considered weekend minutes or nonpeak minutes. All other calls are considered to be using peak minutes. We charge airtime for most calls, including toll free and operator assisted calls. All international calls will incur airtime charges and international per minute fees.** Instructions for international calling can be found in your Welcome Package and at www.powernetglobal.com. For International calling rates, contact us at 1-866-200-5200. **You agree to pay for all additional airtime charges, roaming fees, long distance fees, international calling fees 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 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. You also agree to pay any surcharges, access fees, governmental fees and similar fees such as fees for Universal Service and other Regulatory fees that we bill you. These charges may change at any time without notice.
- d. If your Calling/Bundling Plan qualifies for the Loyalty Reward, beginning in the fourth (4th) billing cycle you will receive a percentage credit off the Monthly Access Charge every month thereafter as long as your account is in good standing and you are current on your payments. We may discontinue the Loyalty Rewards Program at any time without notice to you.

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 sales tax amount from your equipment and accessory purchase;
 - ii. The nonrefundable activation fee;
 - iii. The monthly access fee for the next bill cycle and possibly a prorated amount for the current month.
 - iv. If applicable, any credit due to you from your phone purchase corresponding to the Calling Plan you chose.
- 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.
- 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 1-866-200-5200 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. Both parties will use good faith efforts to resolve the dispute within forty-five (45) days from the Due Date of the invoice in question. If, at the end of the forty-five (45) day period, we resolve the dispute against you, we will notify you and all amounts that were the subject of the dispute shall be paid by you within two (2) business days of such notification. If we resolve the dispute in your favor then we will notify you and a credit for the disputed amounts shall be posted to the next invoice following such notice.

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, we may immediately and without notice suspend or terminate your Service pursuant to Section 10.
- b. **Lost or stolen devices.** If your wireless device is lost or stolen, call us immediately at 1-866-200-5200. 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. Changes to Service.** You may change Calling Plans at any time, however you will be charged a fee. Generally, any change will not be effective prior to the beginning of the next billing cycle.
- 7. 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.
- 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. **Numbers and Email Addresses.** Except as allowed by law, you have no rights to any number or email address that may be assigned to your device. If you desire to transfer a number from another carrier to us, we will attempt to accommodate you but we make no guarantee that transfers of numbers to or from us will be successful.
- 9. Limitation of Liability; 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 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. POWERNET MAKES NO WARRANTY WITH RESPECT TO THE SERVICE OR ITS 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.
- 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 Services 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 1-866-200-5200. 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. Returns.** You may terminate your Service and return your wireless device for any reason for a refund within fourteen (14) days of delivery of your wireless device. You remain obligated to pay the pro-rated monthly access and usage charges, all activation 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 1-866-200-5200 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, go to our website at www.powernetglobal.com or call us at 1-866-200-5200.

- 12. 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 1-866-200-5200 within forty-eight (48) hours of accepting delivery in order to return the package.
- 13. Defective equipment.** Wireless devices that become defective within one (1) year after purchase may be returned to the manufacturer for repair or replacement under the manufacturer's warranty. 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. For information regarding return of your product or more specific information about returned products, call us at 1-866-200-5200.
- 14. Indemnification.** You will 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.
- 15. 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.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.
- 20. 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.
- 21. 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.