

CROSSCONNECT
BUSINESS SERVICE AGREEMENT
TERMS AND CONDITIONS

1. CUSTOMER hereby orders and PowerNet Global Communications (“CROSSCONNECT”) agrees to provide communications services (“Services”) pursuant to this Business Service Agreement (“Agreement”). The rates, terms and conditions set forth herein shall be deemed to constitute this Agreement along with the provisions of any Applicable Tariffs. The provisions of any Applicable Tariffs are incorporated herein by this reference. Service will be provided in accordance with the rates, terms and conditions described in this Agreement and the rates, terms and conditions in Applicable Tariffs pertaining to the Services provided under this Agreement.
2. The term of this Agreement is as specified or is one month if no term is specified.
3. In the event of any inconsistency between the terms of any Applicable Tariff and this Agreement, the terms of the Tariff shall prevail. CROSSCONNECT shall use its best efforts to maintain all Applicable Tariffs consistent with the terms of this Agreement. All International rates are subject to change immediately and without notice to Customer. This Agreement, your Service and all domestic rates are subject to change upon thirty (30) days written notice to Customer. If you use the Service after the effective date of the changes, then you have accepted the new rates, terms and conditions of the Service and this Agreement. 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.
4. EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT OR THE APPLICABLE TARIFFS, CROSSCONNECT EXCLUDES ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CROSSCONNECT’S LIABILITY TO CUSTOMER IS SUBJECT TO THE LIMITATIONS STATED IN THIS AGREEMENT AND APPLICABLE TARIFFS. The liability of CROSSCONNECT for damages arising out of the furnishing of its Services including, but not limited to, mistakes, omissions, interruptions, delays, errors, other defects, representations by CROSSCONNECT, or failure to furnish Service whether caused by acts or omissions of CROSSCONNECT or any third party shall be limited to the prorated charge for Services for the applicable period. CROSSCONNECT will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages.
5. This Agreement (whether in contract, indemnity, warranty, strict liability, tort or otherwise, except choice of law) shall be governed by the State of Ohio and applicable federal statutes or, as relevant to discontinuance of Service only, the law of CUSTOMER’S state.
6. CUSTOMER is required to pay all charges for Service in accordance with CROSSCONNECT’S billing and collection practices. CUSTOMER will be held responsible for all charges for the Service including all charges incurred through the use of pass codes assigned to CUSTOMER’S account. CUSTOMER is solely responsible for the security of all pass codes assigned to CUSTOMER’S account. The billing period shall be one month. CROSSCONNECT will send to Customer via email a notice that CROSSCONNECT has prepared Customer’s invoice and that Customer may log on to CROSSCONNECT’S web based Customer Portal at <https://ecare.pngcom.com/customerportal/loginform.php> to view the invoice. Customer will be sent a paper summary bill and charged a fee unless Customer uses CROSSCONNECT’S Customer Portal. All undisputed amounts stated on each invoice are due and payable in U.S. dollars within twenty (20) calendar days of the date on which CROSSCONNECT sends the email notifying Customer that Customer’s invoice is available (the “Due Date”). CUSTOMER must remit payment for all billed charges by the due date shown on the bill. If CUSTOMER fails to remit payment of all undisputed amounts by the due date, CROSSCONNECT may apply a late payment charge of one and one-half percent (1.5%) per month or the maximum fee allowed by law to any outstanding unpaid balance. Restrictive endorsements or statements on checks accepted by CROSSCONNECT will not be binding upon CROSSCONNECT.
7. CROSSCONNECT may make billing adjustments for Services for one hundred and eighty (180) days after the date of the invoice for Services provided by CROSSCONNECT or for the greater of one hundred and eighty (180) days or any period allowed by law, government rule or regulation, or contract.
8. In the event that CUSTOMER fails to pay all billed charges by the due date shown on any bill, CROSSCONNECT may discontinue provision of the Services to CUSTOMER after seven (7) days written notice to CUSTOMER. CUSTOMER shall remain liable for payment of all charges incurred for the use of the Services.
9. CROSSCONNECT may assess a Returned Check Fee as allowed by the law of CUSTOMER’S state for any dishonored check presented to CROSSCONNECT by CUSTOMER as payment for the Services.
10. CROSSCONNECT may refuse to provide the Services to any CUSTOMER who fails to establish acceptable credit. CROSSCONNECT, from time to time, may request that CUSTOMER re-establish credit or provide additional security as a condition of continued Service. Failure of CUSTOMER to provide such additional security shall be deemed a breach of this Agreement and cause for termination of this Agreement and of CUSTOMER’S Service.

11. This Agreement and the applicable tariffs constitute the entire Agreement between the parties with respect to the Services to be provided hereunder. This Agreement supersedes all prior Agreements, proposals, representations, statements, or understandings, whether written or oral, concerning such Services or the rights and obligations relating thereto.
12. CUSTOMER represents and warrants that the person executing this Agreement on CUSTOMER's behalf is fully authorized to do so.
13. CUSTOMER's obligation to pay all charges incurred under this Agreement shall survive termination. CUSTOMER shall notify CROSSCONNECT of any sale, merger or other transaction in which control of CUSTOMER or substantially all of CUSTOMER's assets is transferred to another person or entity. This Agreement shall be binding on CUSTOMER's successors and assigns.
14. CROSSCONNECT assumes no responsibility to monitor the content of messages transmitted through CUSTOMER's use of the Service. CUSTOMER agrees to defend and indemnify CROSSCONNECT against all claims, suits, damages, liabilities and losses resulting from CUSTOMER's use of the Service.
15. Customer shall not send any calls that would incur any third party charges including but not limited to 800 collect, third party, 900/976 or credit card calls. CROSSCONNECT will reject any such calls.
16. 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.