

Standard Form of Agreement

1. The Agreement

1.1 The Parties

1.1.1 PowerNET Computer Consultants, trading as PowerNET IT Solutions ABN 14 064 174 956, 4 Gipps Street, Collingwood, Victoria 3066 (hereinafter referred to as "PowerNET", "us", "our") and the Client (being an entity subscribing to PowerNET for the provision of its products and services) agree that by accessing PowerNET's products and services, you (hereinafter referred to as "The Client", "you" and "your") accept, without limitation or qualification, the terms and conditions contained within the Standard Form of Agreement.

1.2 Definition of PowerNET's Standard Form of Agreement

1.2.1 The PowerNET Standard Form of Agreement (SFOA) sets out the standard terms and conditions of our services and the products we offer.

1.2.2 Extra terms and conditions or alternate terms and conditions may apply in certain cases and may apply to specific goods and services. These additional or alternate terms and conditions will be implicitly stated upon issuance and acceptance of a quote, proposal or agreement issued by PowerNET.

1.3 SFOA Application

1.3.1 Our SFOA is in force from midnight of the client onboarding date.

1.3.2 If there was an existing fixed term contract or agreement to supply services to you when our SFOA came into effect, then the existing contract continues until the end of the fixed term; and after that our SFOA applies.

1.4 Accessing the SFOA Document

1.4.1 The Standard Form of Agreement is available via our website or from our office. If you require assistance in reading this document please contact our office.

1.5 Changes to the SFOA Document

1.5.1 The Client agrees to be bound by the SFOA as executed by us and you on commencement of the Agreement.

2. Our Services

2.1 A 'service' means any goods or service that we offer or supply. Each service may be briefly identified by its 'service description'.

2.2 PowerNET provides a range of information technology services, including:

2.2.1 managed services;

2.2.2 outsourcing;

2.2.3 cloud services; (incl. Infrastructure as a Service (IaaS) and Backup and Recovery as a Service products);

2.2.4 infrastructure services; systems integration; project services;

2.2.5 hardware, software and licensing procurement

2.2.6 intranet solutions; application management; application development;

2.2.7 telephony and unified communications

2.3 For each Service Contract, we will provide you with the service specified in the relevant Product Terms

3. Offer and Acceptance

3.1 Any quotation made by PowerNET is not an offer to sell or license or to provide goods or services. We shall not be bound by any order whether given in pursuance of any quotation or otherwise until it is accepted in writing by the Company

3.2 the Company reserve the right to make any changes necessary to quotations, prices or charges and rates to correct errors including estimates of time taken to carry out a service or complete a product or allow for increases in the cost of labour or materials, foreign exchange rates, taxes or duties as and when required.

3.3 The Company will inform the Client of any changes as outlined on Clause 4.2 as soon as is practicable.

4. Applying for a Service

4.1 You may make an Application for supply of one or more Services by:

4.1.1 Requesting a quote from one of our Business Development personnel by telephone call or by sending a quote request via email

4.1.2 Providing signed acceptance of a quote provided to you

5. Provisioning Your Service

5.1 Upon our acceptance of your Application, or, if applicable, execution of this Agreement by PowerNET and you, a contract is formed and you become bound by this Agreement and the term and charges associated with the Service. The contract between PowerNET remains in force until it is terminated in accordance with this Agreement.

5.2 We will retain control and decide the route and technical means that we use to provide the Service.

5.3 You must reasonably co-operate with PowerNET to allow us to provision and supply the Service to you safely and efficiently.

5.4 If you request and accept a quote, you must provide true, current, accurate and complete information. You further agree to keep PowerNET current on any changes in that information.

5.5 You agree that, if you provide incorrect information which is actioned by us or a third party, that you will be liable for a resubmission payment to be paid to PowerNET.

5.6 A delay may occur between execution of the Agreement and the provisioning of the Service. We are not and will not be responsible for any delays, nor any inability by PowerNET to provide the Service to you.

5.7 Should PowerNET not be able to provide the Service to you, you will not be liable to PowerNET for any costs incurred by PowerNET prior to the provisioning of Service to you as required under this SFOA.

5.8 You are responsible for all acts or omissions that occur under your account or password, including the content of transmissions through the Services provided to you by PowerNET and maintaining the confidentiality of your password(s).

5.9 You will not publish, distribute or disseminate defamatory or otherwise unlawful material through the use of the Services provided to you by PowerNET.

5.10 You will not use the Services provided to you by PowerNET to threaten, harass, stalk, abuse, or otherwise violate the legal rights (including rights of privacy) of others.

5.11 You will not use the Services provided to you by PowerNET to infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy.

5.12 You must ensure that your use of the Services provided to you by PowerNET does not expose any minor



to material that is unsuitable for minors and you will indemnify PowerNET for any liability we incur as a result of your breach of this clause. You may obtain advice on available content filtering software which may be of assistance to you from the following web page:

<http://www.commsalliance.com.au/Activities/ispi/fff>

- 5.13 You acknowledge that it is your sole responsibility to comply with any rules imposed by any third party whose content or service you access using the Services provided to you by PowerNET.
- 5.14 You acknowledge that we may take all reasonably necessary steps to ensure the efficient operation of the Services provided to you by PowerNET.
- 5.15 Your failure to observe any of the foregoing limitations may result in civil or criminal liability, and the immediate termination of your Service(s).

6. Responsible and Acceptable Usage

- 6.1 You must comply with rules, regulations and acceptable usage policies that are in force for each service you access. If you act recklessly or irresponsibly or your actions endanger our network, or infrastructure, your access may be suspended at any time.

7. Secure Usage

- 7.1 We require that you take responsibility for maintaining the security of your Service. Protection of the security aspects of your Service, like accounts and passwords, are your responsibility. Subsequent usage of your Service by a third party will result in you being responsible for the charges incurred.

8. Unlawful Usage

- 8.1 Our Services may only be used for lawful and authorised purposes. Storage, transmission or distribution of any material in violation of Commonwealth or State legislation is prohibited. This includes copyright material, material legally judged as threatening or obscene, or material protected by trade secret.
- 8.2 You must not use, or allow any other person to use, the network and systems for any activities of an illegal or fraudulent nature, including any activities prohibited under state and/or Commonwealth Laws.

9. Unauthorised Usage

- 9.1 Any attempt to access or modify unauthorised computer system information or to interfere with normal system operations, whether on the equipment of ours or any computer system or network that is accessed by our services, may result in the suspension or termination of your access. Unauthorised activities include, but are not limited to, guessing or using passwords other than your own, accessing information that does not have public permission, and accessing any system on which you are not welcome.
- 9.2 Any attempt to disrupt or interfere with users, services or equipment, may result in the termination or suspension of your access. Disruptions include, but are not limited to, distribution of unsolicited advertising or spamming, monopolisation of services, propagation of, or transmission of information or software which contains, computer worms, trojan horses, viruses or other harmful components, using the network to make unauthorised entry to any other machine accessible via our network, sending harassing or threatening e-mail and forgery or attempted forgery of e-mail messages.
- 9.3 You will be held liable for, and indemnify PowerNET for, all costs and damages, attributable to your unauthorised activities or disruptions.

10. Service Suspension

- 10.1 We may suspend your service under an agreement or contract without notice and without any liability



for loss and without prejudice to our rights under the agreement or contract or at law if:

- 10.1.1 we suspect that your service has been accessed without authority, or the integrity of your service has been compromised
 - 10.1.2 we suspect that your service has been used for unlawful purposes
 - 10.1.3 you have not paid money owed to us
 - 10.1.4 we consider it necessary to protect our infrastructure
 - 10.1.5 you are in breach of any contract or agreement you have with us
 - 10.1.6 a governmental or law enforcement agency asks us to do so
 - 10.1.7 a wholesaler requires us to do so
 - 10.1.8 we consider that unless we do so, there is an unacceptable risk that there will be a breach of a law or an agreement between us and a wholesaler; or
 - 10.1.9 you have changed contact details without informing us
- 10.2 Suspension does not affect your liability for charges under its agreement or contract, where that suspension is caused by a breach of your agreement or contract with us.
- 10.3 Unless the reason or circumstance that caused the suspension is resolved to our satisfaction within seven days, we may terminate your contract.

11. Service Cancellation

- 11.1 You are required to contact PowerNET thirty (30) days prior to the end of your contract or agreement terms should you wish to cancel your Service. If we do not receive notification from you prior to the end of your contract term the service will roll over for the next billing period in accordance with the Service Description.

12. Service Termination

- 12.1 Without limiting the generality of any other clause in this Agreement, we may terminate your Agreement immediately if:
 - 12.1.1 you have provided PowerNET with false or misleading information or you have not provided PowerNET with any information that we have reasonably requested for the purposes of this Agreement;
 - 12.1.2 your nominated payment method is refused or dishonoured, or you fail to pay the amount specified within our payment terms;
 - 12.1.3 you breach a contract and fail to remedy the breach within seven days after receiving a notice requiring that it be remedied;
 - 12.1.4 we discover or reasonably believe that you are a minor or do not believe you have the authority to enter into this Agreement;
 - 12.1.5 we believe you are about to or may become or are in jeopardy of becoming subject to any form of insolvency administration;
 - 12.1.6 if you, being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving;
 - 12.1.7 you unlawfully use the Services provided by PowerNET.
 - 12.1.8 you, the Client dies (in the case where the Client is a sole trader or partner is a partnership)
 - 12.1.9 in any other circumstance where the agreement or contract allows us to do so
- 12.2 If we terminate a customer contract because you have breached it, you must pay us, on invoice, the charges that would have been payable under that customer contract if it had not been terminated until after any minimum term. This is our genuine estimate of the loss we will suffer or are likely to suffer.
- 12.3 You may terminate this Agreement immediately if PowerNET becomes insolvent or bankrupt. All Customer Data remains your property and must be returned to you within ten (10) Business Days.
- 12.4 Either party can terminate the contract:



12.4.1 on notice by either party, given after its minimum term (or fixed term) has expired. Such a notice takes effect at the end of the next billing month that occurs at least 30 days after the notice was given; or

12.4.2 in any other way that the contract allows.

12.5 If you have more than one contract, and you breach one of them, you are in breach of all of them. We can terminate any or all of your contracts, or exercise any other rights we have under a contract.

13. Minimum Terms

13.1 If your contract has a minimum term:

13.1.1 you cannot cancel the contract during the minimum term (except in specific cases where the term says otherwise);

13.1.2 it continues until either PowerNET or you cancel the contract

13.2 If a contract is terminated or cancelled prior to the minimum terms having been served, the client will be liable for payout of the remaining period. The remaining period being from date of cancellation to the date the minimum term would have expired.

14. Pricing

14.1 We may charge you for our services in accordance with the quote, proposal or agreement you have accepted.

14.2 We may change the price of our services by notifying you.

14.3 Changes take effect immediately. They have no effect on charges for services that have already been supplied.

14.4 In some circumstances, if we change our prices you may be entitled to cancel your customer contract early. **Clause 17 explains that.**

14.5 Pricing of services is not part of our standard form of agreement, but it is part of our customer contract with you.

14.6 If a customer contract states that charges for the contract will be fixed for a certain period, or until a certain date, changes made during that period, or before that date, do not take effect until the end of that period, or until that date.

14.7 If a contract states that charges will be reviewed at certain intervals, we will not change or restructure charges for that customer contract more frequently than once per that interval.

14.8 Despite clause 15.6 but subject to clause 17, we may pass on price increases:

14.8.1 which our third party suppliers may impose on us;

14.8.2 which are imposed on us by law such as an increase in GST;

during a fixed term or recurring term customer contract, but where we do, we will provide you with notice at least 30 days prior to the date on which the variation is intended to take effect.

15. Special terms

15.1 We may also agree with you that special terms will apply to our agreement with you.

15.2 Special terms only apply if they are in writing and we agree to them. For instance, they may be set out on a quote or proposal.

15.3 If we agree in writing to charge you on some basis other than the standard product and service price, that agreement is taken to be a special term.

15.4 Special terms are not part of our SFOA, but they are part of our contract with you.

16. Our Client Contract



- 16.1 When we supply a service to you, the terms and conditions of supply consists of:
 - 16.1.1 this SFOA – Part 1; and
 - 16.1.2 any applicable service terms; and
 - 16.1.3 the applicable items in the accepted quote and/or proposal; and
 - 16.1.4 any applicable special terms.
- 16.2 Together, those terms and conditions and items are called the ‘contract’
- 17. Contract Changes
 - 17.1 We may change the terms of your contract, subject to this clause.
 - 17.2 We may change any part of our SFOA’s by amending the Official Copy displayed on the company website.
 - 17.3 We may change our standard product and service pricing – where we do, you can obtain new pricing by contacting us (unless we have already informed you).
 - 17.4 We may change any other part of your contract, including our pricing, by informing you of the change, but in the case of fixed term contracts we cannot change the price you pay until after the fixed term has expired, except in the manner allowed for in clause 14.8.
 - 17.5 If the law requires us to comply with any steps or requirements before we change our SFOA’s in a particular way, such changes do not take effect until we have complied with those steps or requirements.
 - 17.6 You can change your contract at the expiration of the minimum term:
 - 17.6.1 if we agree; and
 - 17.6.2 if you give us 30 day’s notice prior to the commencement of the next billing month; but we are not obliged to effect any change until after the expiry of your 30 day notice.
 - 17.7 Otherwise:
 - 17.7.1 changes to our SFOA’s take effect when we change the Official Copy;
 - 17.7.2 changes to any other part of a contract take effect 30 days after we inform you of the change; and
 - 17.7.3 despite anything to the contrary, all changes whether to these SFOA’s or any additional terms, apply immediately to all new customer contracts entered into after the changes
- 18. Locating the ‘Official Copy’ of our SFOA’s
 - 18.1 The ‘Official Copy’ of our SFOA’s (i.e. these core terms and category terms) is the copy published online at www.power-net.com.au
 - 18.2 The Official Copy is taken to be the current and accurate version of those documents at any time.
- 19. The effect of changes to your contract
 - 19.1 If we change your contract, you may be entitled to cancel it early. But you only have that right strictly in accordance with this clause.
 - 19.2 You may cancel your contract if:
 - 19.2.1 increase the charges that apply to it; and
 - 19.2.2 the increase is not limited to passing on increases in costs that we incur to a third party or in government charges; and
 - 19.2.3 the increase in charges would have increased your actual payments to us if it had applied from a date six months earlier; and
 - 19.2.4 you give us written notice of cancellation within 30 days after we inform you of the increase in charges



20. Multiple services

- 20.1 If we supply multiple services, the special terms, prices, service terms that would apply to the different services if ordered separately apply to each of them individually within the mixture.

21. Additional terms

- 21.1 Except for things set out in express terms in a customer contract, and things that are implied by law and cannot be excluded, there are no other representations, promises, warranties, covenants or undertakings between the parties and contracts contain the entire understanding between us

22. Charges & Invoicing

- 22.1 We may charge you, and you must pay us in accordance with the quote, invoice, proposal and/or agreement you have been provided and accepted. This includes the payment terms and conditions on the quote, invoice, proposal and/or agreement.
- 22.2 We may require payment of your periodic or repeating charges in advance or arrears – but we will ordinarily require payment in arrears.
- 22.3 Set up charges are payable as soon as we agree to provide the service, or at any later date we agree to in writing.
- 22.4 Periodic or repeating charges commence from the date when we inform you that they are ready to supply the service, whether or not you actually make use of the service.
- 22.5 Apart from our other rights in case of non-payment, we may suspend services and/or charge interest and/or a one off fee for late payment.
- 22.6 Without prejudice to any other rights we have, if your payment is dishonoured, we have the right to pass on our bank's dishonour fee and one off administrative fee to you.
- 22.7 At our discretion, we may require payment of an advance deposit (or a Direct Debit Authority, or a Credit Card Authority) against future charges or out-of-pocket expenses. If we do, it becomes a condition of your customer contract.
- 22.8 We may vary the amount of advance deposit we require under clause 22.7 at any time.
- 22.9 We may invoice you whenever charges have accrued.
- 22.10 Recurring and/or repeating charges are normally invoiced by 'billing months' and require payment by Direct Debit Authority or Credit Card Authority. A 'billing month' is a month, starting on a day of the month that we nominate, which is currently the 1st day of every calendar month.
- 22.11 If we hold your advance deposit, Direct Debit Authority, or Credit Card Authority, we may draw payment as soon as a charge has accrued.

23. Payment

- 23.1 Unless otherwise agreed in writing payment terms :
- 23.1.1 for all invoices for consulting are due 30 days from the invoice date
- 23.1.2 we must receive payment in full prior to delivery for all hardware, software and/or license quotes
- 23.1.3 hardware, software and/or license quotes over \$1,500 require 50% deposit upon acceptance of the quote and payment in full prior to delivery
- 23.1.4 all periodic or repeating charges associated with an agreement must be paid via direct debit from an authorised bank account or credit card (Mastercard or Visa). A Direct Debit or Credit Card Authority must be completed as set out in Clause 22.10
- 23.2 Any client that declines to pay periodic or repeating charges by direct debit, must:
- 23.2.1 pay all invoices for periodic or repeating charges within 15 days of the invoice date; and
- 23.2.2 pass our credit check. Passing a credit check is at the discretion of PowerNET



- 23.3 The Company reserves the right to charge interest at the rate prescribed from time to time under section 2 of the Penalty Interest Rate Act 1983 on overdue accounts or at any other rate stipulated in its invoice.
 - 23.4 Any costs or disbursements incurred by us, and/or its agents in collecting overdue accounts (including debt collection fees, commission and solicitor's costs) shall be borne by the Client.
 - 23.5 All payments made by credit card incur a 2.5% surcharge on the amounts being paid.
 - 23.6 PowerNET accepts payment by credit card (Mastercard and Visa only), Electronic Funds Transfer (EFT) and/or cheque
24. Billing Disputes
- 24.1 You may dispute charges in an invoice by written notice provided that the you:
 - 24.1.1 give notice to us within 14 days of the invoice date;
 - 24.1.2 clearly identify yourself and the invoice you dispute;
 - 24.1.3 detail the grounds of your dispute;
 - 24.1.4 send the dispute in writing to accounts@power-net.com.au
 - 24.2 If a bona fide billing dispute is lodged in accordance with clause 24.1 you may withhold payment of the disputed amount only until we have conducted reasonable and appropriate investigations. At the end of our investigations we will notify you of the outcome.
 - 24.3 Where we require payment after investigation:
 - 24.3.1 we will notify you of the outcome; and
 - 24.3.2 you must pay us all outstanding amounts without deduction or set-off within seven (7) business days of our notification
 - 24.4 If we do not uphold your billing dispute, you are required to pay us and we may charge interest on any withheld money from the time it was due until the time we actually receive payment
25. General disputes
- 25.1 If a contract includes a service level agreement that deals with a dispute between us, the dispute must be dealt with according to that service level agreement.
 - 25.2 If you dispute an invoice, the dispute must be dealt with under clause 24.
 - 25.3 Otherwise, if you have a dispute with us then you must notify us by notice in writing which must:
 - 25.3.1 be given to us within 14 days of the date of the invoice or event relating to the dispute;
 - 25.3.2 clearly identify your dispute;
 - 25.3.3 detail the grounds of your dispute.
 - 25.4 We will acknowledge your notice within 14 days
 - 25.5 You must still pay all invoices by their due date
26. GST
- 26.1 Except where express provision is made to the contrary, the consideration payable by you under this agreement represents the value of any taxable supply for which payment is to be made.
 - 26.2 Subject to us supplying you with a valid tax invoice, if we make a taxable supply for a consideration, which represents its value, then you will pay, at the same time and in the same manner as the value is otherwise payable, (or, if for any reason that does not happen, without delay after we request you to) the amount of any GST payable in respect of the taxable supply.
 - 26.3 Subject to us supplying you with a valid tax invoice, if this agreement requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of a taxable supply from a third



party, the amount required to be paid, reimbursed or contributed by you will be the value of the acquisition by us less any input tax credit to which we are entitled plus, if our recovery from you is a taxable supply, any GST payable under clause 26.2.

27. Support for Services

- 27.1 We will support a service as specified in the contract.
- 27.2 We are not obliged to support a service in any way that is not specified. For instance, unless a customer contract states otherwise, we are not obliged to provide:
 - 27.2.1 on-site support; or
 - 27.2.2 software or hardware support; or
 - 27.2.3 support outside business hours.
- 27.3 If a customer contract includes a service level guarantee, we will provide support in accordance with it.

28. Spam

- 28.1 You may not use a Service to:
 - 28.1.1 send, allow to be sent, or assist in the sending of Spam;
 - 28.1.2 use or distribute any software designed to harvest email addresses; or
 - 28.1.3 otherwise breach the Spam Act 2003 or the Spam Regulations 2004 of the Commonwealth.
- 28.2 In addition to our other rights, we may suspend our provision of the Service to you in the following events:
 - 28.2.1 if the Service provided to you is being used to host any device or service that allows email to be sent between third parties not under your authority and control; or
 - 28.2.2 if you are in breach of clause 28.1;
 - provided however that we will first make reasonable attempts to contact you and give you the opportunity to address the problem within a reasonable time period. What is reasonable in this context will depend on the severity of the problems being caused by the open service or breach referred to above
- 28.3 You agree to use your best endeavours to secure any device or network within your control against being used in breach of clause 28.1 by third parties, including where appropriate:
 - 28.3.1 the installation and maintenance of antivirus software;
 - 28.3.2 the installation and maintenance of firewall software; and
 - 28.3.3 the application of operating system and application software patches and updates.
- 28.4 Our right to suspend your account applies regardless of whether the open service is provided or the breach is committed intentionally, through misconfiguration, or by other means not authorised by you including but not limited to through a Trojan horse or virus.
- 28.5 We may scan any IP address ranges allocated to you for your use with the Service in order to detect the presence of open or otherwise misconfigured mail and proxy servers.
- 28.6 If the Service is suspended and the grounds upon which it was suspended are not corrected by you within 7 days, we may terminate the Service.
- 28.7 If the Service is terminated under clause 28.6, in addition to our other rights, we may levy a reasonable fee for any costs incurred as a result of the conduct that resulted in the suspension.

29. Your other obligations

- 29.1 You must:
 - 29.1.1 obtain any permit, license or consent which you are required to have the Service provided;



29.1.2 be responsible for all data that you retrieve, store, transmit, or use in any other way;

29.1.3 maintain the security of your password and user identification;

29.2 You must not:

29.2.1 do anything which will damage or interfere with our network or facilities;

29.2.2 do anything unlawful with a service;

29.2.3 share a service with any third party without our written consent; or

29.2.4 do anything with a service which may subject either you or us to a claim

30. Warranties and liability

Rights and remedies for non-PDH goods costing no more than \$40,000

30.1 If we supply you with goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption but costing no more than \$40,000 you have extensive rights under the Australian Consumer Law including consumer guarantees and remedies but:

30.2 in relation to these goods, our liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:

30.2.1 replacing the goods or supplying equivalent ones;

30.2.2 repairing the goods; paying the cost of replacing the goods or of acquiring equivalent ones; or

30.2.3 paying the cost of having the goods repaired; and

30.2.4 in relation to these services, our liability for failure to comply with a consumer guarantee is limited to:

30.2.4.1 supplying the services again; or

30.2.4.2 paying the cost of having the services supplied again.

Exclusion of implied terms and limitation of liability

30.3 Subject to clause 30.1:

30.3.1 Any representation, warranty, condition, guarantee or undertaking that would be implied in these terms by legislation, common law, equity, trade, custom or usage or otherwise is excluded to the fullest extent permitted by law.

30.3.2 We do not warrant or represent the performance, accuracy, reliability or continued availability of our goods and services or that they will be free from faults, errors or interruptions.

30.3.3 We are never liable to you for, and you release us from any Claim for, any Contract Loss.

30.4 For the purpose of this Agreement:

30.4.1 Claim means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim); and

30.4.2 Contract Loss means loss or damage suffered by you and arising in connection with or out of these terms or any supply made under them (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not loss or damage the risk of which we were or should have been aware), including but not limited to economic loss, business interruption, loss of revenue, profits, actual or potential business opportunities or contracts, anticipated savings, loss of profits, loss of data, indirect or consequential loss, an obligation to indemnify another person or an obligation to contribute to the compensation of loss or damage suffered by another person.

31. Your indemnities

31.1 You indemnify us (on a full indemnity basis including all legal costs and expenses) against any claim, loss or damage we suffer to the extent that it arises from:



- 31.1.1 any act or omission;
- 31.1.2 any breach of any law;
- 31.1.3 any breach of a customer contract or an AUP;
- 31.1.4 any unauthorised use of a service – by you or anyone using a service we provide to you.

32. Safety of data and set up

- 32.1 Unless a contract specifies that we will create a back-up of any data and/or customised software set up of yours, you are solely responsible for ensuring that you have a complete, working back up of them.
- 32.2 We are entitled to assume that you have complied with clause 32.1.
- 32.3 You indemnify us against loss or damage that you or anyone else suffers as a result of damage to data or customised software set up on your computer system.
- 32.4 We are not obliged to provide you or any third party with historical data (e.g. material that used to be stored on our server).
- 32.5 You do not have any rights to any particular user identification, password, customer number, IP address, or any other thing which we may provide as part of a service. We can direct you to change these at any time.
- 32.6 We are not required to store any email or data in accounts that are not active (such as a suspended or terminated account), and we are not responsible for any loss or damage because of this.

33. System Monitoring

- 33.1 Unless a contract states otherwise, no service is provided on the basis that we will:
 - 33.1.1 monitor your computer system or any part of it;
 - 33.1.2 follow up or review any issue once it has been attended to;
 - 33.1.3 update, upgrade or patch anything in future;
 - 33.1.4 notify or remind you about anything in future.

34. Equipment Supply

- 34.1 If we sell any equipment to you:
 - 34.1.1 we retain title to and ownership all that equipment sold by us to you until all amounts due in respect of all equipment and all other amounts you owe us actually or contingently presently or in future have been paid by you in full;
 - 34.1.2 risk of loss or damage passes to you when it is delivered to your premises;
 - 34.1.3 you must fully insure it from the time of delivery and maintain the insurance until you obtain title, and failing that until the equipment is delivered up to us. You must insure the equipment for its full value and ensure that our interest is noted on the policy. We may require you to demonstrate compliance with this clause by producing a copy of the insurance policy;
- 34.2 you must not:
 - 34.2.1 mortgage, charge or encumber the equipment without our written consent; and
 - 34.2.2 loan, rent, licence, transfer or assign or part with possession of the equipment without our written consent.
- 34.3 You must allow us to enter upon your premises to inspect the equipment in your possession upon reasonable notice from time to time;
 - 34.3.1 If:



34.3.1.1 You fail to pay any amount (whether in whole or part) payable in respect of any equipment by the time required for payment;

34.3.1.2 You become insolvent (as that term is defined in the Corporations Act 2001); or

34.3.1.3 Our customer contract is terminated, or becomes terminable at our option, we may, without notice to you, enter at any reasonable time any premises where equipment is located (or believed by us to be located) and take possession of that equipment not paid for and any other equipment to the value of the amount owing. Our permission to enter your premises for that purpose is irrevocable. We are not liable to you in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by you as a result of any action taken by us under this clause.

34.3.2 If any equipment belonging to us are sold or otherwise disposed of by you or if any insurance claim is made in respect of them, we are entitled to trace and receive the sale or insurance proceeds. You must notify us of all insurance claims made you in respect of the equipment. You must keep the proceeds of sale or insurance in a separate bank account on trust for us.

34.3.3 You must reimburse to us all costs incurred by us in exercising our rights under this clause.

35. PPS Law

35.1 This clause applies to the extent that our customer contract provides for or contains a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Law) (or part of it).

35.2 The security interest granted to us is a 'purchase money security interest' (PMSI) to the extent that it can be under section 14 of the PPS Law.

35.3 We may register our security interest. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:

35.3.1 Ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;

35.3.2 Enabling us to gain first priority (or any other priority agreed to us in writing) for our security interest; and

35.3.3 Enabling us to exercise rights in connection with the security interest.

35.4 Our rights under our contract are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under our customer contract, and/or under such other law, as we see fit.

35.5 The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of our customer contract in respect of goods that are not used predominantly for personal, domestic or household purposes:

35.6 sections 95 (notice of removal of accession to the extent it requires us to give a notice to you), 96 (retention of accession), 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires us to give a notice to you); section 132(3)(d) (consents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).The following provisions of the PPS Law:

Section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral), Confer rights on us. You agree that in addition to those rights we shall if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any equipment, not only under those sections but also, as additional and independent rights, under our customer contract and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.



- 35.6.1 You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 35.6.2 The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to us the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation or be subject to injunction if we breach this sub-clause.
- 35.6.3 You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the equipment other than with our express written consent.
- 35.6.4 You must not lease, hire, bail or give possession of ('sub-hire') the equipment to anyone else unless we (in our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under our customer contract.
- 35.6.5 You must take all steps including registration under PPS Law as may be required to:
 - 35.6.5.1 Ensure that any security interest arising under or in respect of the subhire is enforceable, perfected and otherwise effective under the PPS law;
 - 35.6.5.2 Enabling you to gain (subject always to our rights) first priority (or any other priority we agree to in writing) for the security interest; and
 - 35.6.5.3 Enabling each of us to exercise our respective rights in connection with the security interest.
- 35.6.6 We may recover from you the cost of doing anything under this clause, including the registration fees and the costs notification.

36. Your premises

- 36.1 If our staff attend any premises at your request, you must ensure that the premises are safe and free of risks to life, health or welfare.

37. Confidential Information

- 37.1 Each party must treat the confidential information of the other party as confidential and commercially valuable and ensure that its representatives do the same.
- 37.2 You consent to us accessing your information and data for legitimate purposes to provide the service, improve the service or respond to complaints. The terms of clause 45.1 apply to this clause.

38. Force Majeure

- 38.1 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of, the Company is unable to perform in whole or in part any obligation under this agreement the Company shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the Client in respect of such inability.

39. Client contact

- 39.1 On our request, you must nominate at least one client contact.
- 39.2 You must keep us informed of current and accurate contact details of your client contact(s).
- 39.3 A client contact must be contactable at all reasonable times.
- 39.4 We may deal with a client contact on the basis that they are your representative and have your full authority.
- 39.5 A person remains your customer contact until we are given notice that they are no longer your customer contact.

40. Waiving of rights



40.1 No right under a contract can be waived except by notice in writing signed by the party waiving it. If a party overlooks a breach by the other party on one or more occasions, it is not taken to have agreed to any future breach.

41. Assigning of Agreement

41.1 You may not transfer your rights or obligations under a contract to or share them with anyone without our prior written consent.

41.2 We may transfer our rights or obligations under this agreement to or share them with anyone on notice to you.

42. Credit Check

42.1 You authorise us to do the things set out in this clause 42 and acknowledge that we may do so, whenever we see fit for as long as a customer contract continues or you owe us any money.

42.2 We may use a credit report (within the meaning of the Privacy Act 1988 (Commonwealth)) on you to assess your creditworthiness or for debt recovery purposes.

42.3 We may give to a credit reporting agency any information we have about you to enable us to obtain a credit report.

42.4 We may exchange information about you with other credit providers or a credit reporting agency.

42.5 You acknowledge that we are authorised to do the things set out in this clause 49 under the Privacy Act 1988 (Commonwealth) and that to assess or review your creditworthiness, we may:(a) request a third party to report about the your creditworthiness; and (b) disclose financial, credit and other information about you to any person.

42.6 You must cooperate with any enquiries that we make about your creditworthiness and provide any further information, consent or authority we reasonably require.

43. Third party software restrictions

43.1 If we provide any third party software to you, then:

43.1.1 we do so subject to the license terms and conditions that apply to that software; and

43.1.2 you are solely responsible for ensuring the suitability and compatibility of the software.

43.2 If you use software not distributed or approved by us, you acknowledge that it may result in interference to the service or it may result in loss, which we are not responsible for

44. Severance

44.1 If any provision in this agreement is unlawful or inconsistent with any law, then to the extent of the unlawful nature or inconsistency, that provision may be severed from without affecting the remainder of the agreement.

45. Notice given by PowerNET

45.1 Some laws regulate the way in which certain notices can be given. This clause is subject to any such laws.

45.2 We can give you a notice:

45.2.1 by emailing the notice (or a hyperlink to website that contains the notice) to:

45.2.1.1 the most recent email address supplied to us; or

45.2.1.2 any power-net.com.au email address you have; or

45.2.1.3 to any email address whose mail server we host;

45.2.2 by fax to the most recent fax number you supplied to us;

45.2.3 by ordinary mail or hand delivery to the most recent postal address you supplied to us; or (if you are a company) to your registered office;



- 45.2.4 by hand delivery to you
- 45.2.5 by sending the notice by SMS to the last mobile phone number you supplied to us;
- 45.2.6 by publishing the notice on our website and sending you an alert about the notice (including its website address) by SMS to the last mobile phone number you supplied to us;
- 45.2.7 in any other way as permitted by law
- 45.3 Any notice that we send you is deemed to have been received by you as follows:
 - 45.3.1 If it (or a hyperlink to it) is emailed: one hour after it leaves our mail server;
 - 45.3.2 If it (or a hyperlink to it) is emailed to a power-net.com.au email address that you may have: one hour after we send it;
 - 45.3.3 If it is faxed: when our fax machine issues a successful delivery record;
 - 45.3.4 If it is mailed: at 10am on the second business day after posting;
 - 45.3.5 If it is hand delivered to you or your postal address or (if you are a company) your registered office – at the time of delivery
 - 45.3.6 If it is delivered in another way – at the time when it would have been delivered in the normal course of that way of delivery
- 45.4 A notice from us need not be signed
- 46. Notice given by you
 - 46.1 You can give us notice
 - 46.1.1 By email to support@power-net.com.au and cancellations@power-net.com.au
 - 46.1.2 By ordinary mail or hand delivery to the current postal address indicated by our website contact details page –
and in no other way
 - 46.2 Any notice that you send us has no effect until we actually receive it. Even then it has no effect:
 - 46.2.1 If it is mailed: before noon on the second business day after posting;
 - 46.2.2 If it is received outside of business hours: before 9:00 AM on the next business day
 - 46.2.3 If it is received after 4:00 PM on any day: before 9:00 AM on the next business day
 - 46.3 A notice from you must be signed. We are never obliged to verify any mark that purports to be your signature. If you are a corporation, we are never obliged to verify the authority of anyone who purports to sign on your behalf
 - 46.4 Any notice that you send us must be in the English Language

Definitions

Agreement means this agreement for the provision of the Goods and Services by PowerNET to you, which includes this Standard Form of Agreement, the Service Descriptions and Pricing Schedule.

AUP - Acceptable Use Policies

Base allowance - a service use allowance below the amount that attracts excess use charges e.g. if an internet access service allows 8 GB in downloads before excess use charges apply, 8 GB is the 'base allowance'

Billing dispute - a dispute or difference between us as to whether you are liable to pay an amount that we have invoiced to you billing month has the meaning given by clause 21.9





Business day - any day from Monday to Friday inclusive, excluding any public holidays observed in Victoria, New South Wales and Queensland

Business hours - between 6:30 a.m. and 5:30 p.m. on a business day

Claim - any demand, or allegation of liability, and all related costs, claims, demands, liability, damages, losses and expenses of any nature including all legal expenses suffered or incurred

Confidential information - any information of a party which the other party knows or should know is confidential to the other party, for as long as it remains confidential, or would have remained confidential except for a wrongful disclosure by the first party

Credit Card Authority - a written authority to debit your credit card (or a verbal authority to do so)

Client contact - a person/s nominated by you under clause 39

Client Onboarding - When the client accepts standard form of agreement by signing PowerNet Credit Application document.

Contract - agreement and acceptance by a client of a quote, proposal, agreement and the terms and conditions prepared by PowerNET

Customer Data - means all data that is not PowerNET Data. Specifically, data or intellectual property that is owned by The Client and transferred into PowerNET for the purposes of using the PowerNET service.

Direct Debit Authority - a written authority to debit your bank account,

Disputed Amount - in relation to a billing dispute means the amount within the relevant invoice that you dispute liability to pay

Excess use charge - a charge for use of a service in excess of any base allowance

Fixed service fees - fees for any service that apply on a once only basis, or on a periodic basis and are not variable based on data volumes as between periods

Force Majeur - an event or circumstance beyond our reasonable control

General dispute - any dispute or difference between us other than (a) a billing dispute or (b) a claim by us solely for the payment of money

GST - GST within the meaning of the GST Act

GST Act - A New Tax System (Goods and Services Tax) Act 1999 (as amended)

Loss - any harm, losses or expenses of any nature whether direct or indirect, secondary or consequential suffered by you or anyone else

Manufacturer's warranty - a warranty given by the manufacturer or distributor of a thing, or a person from whom we obtain a thing for resupply

Minimum term - a period that we specify as such

Office hours - between 6:30 a.m. and 5:30 p.m. on a business day

Periodic fee - a fee payable at regular intervals e.g. an amount per month





Personal information - the same thing as in the Privacy Act 198831

Price list - our list of fees and charges from time to time

Service description - a guide or description we publish, describing a service we offer, as amended from time to time

Service Desk - means the contact point for faults, which you may contact with by dialing the telephone number 03 9927 6000 or submitting an email to the support@power-net.com.au.

Spam - includes one or more unsolicited commercial electronic messages with an Australian link for purposes of the Spam Act 2003, and derivations of the word "Spam" have corresponding meanings

Repeating term - a period that we specify as such

Representative - a delegate, authorised representative, employee or agent

Service - any service that you request and we agree to supply, generally as described in a service description

Service Guarantee - means the guarantee that PowerNET will meet the Service Level for a particular Service.

Service Level means the percentage of time during a calendar month that a Service is available to you.

Set up charge - a charge that we describe as such, or any charge that we require to be paid in respect of the set up or establishment of a service

Standard Form of Agreement - means this document entitled "Standard Form of Agreement" and includes our Policies.

Support Hours - means 0630HRS to 1730HRS AEST on a Business Day.

Systems Maintenance means maintenance carried out by PowerNET, where notice has been provided to you by email or by posting a notice on the PowerNET website prior to the scheduled event occurring.

Undisputed amount - in relation to a billing dispute means the amount within the relevant invoice that you do not dispute liability to pay

Wholesaler - a third party whose services we utilise in providing a service to you

