



GENERAL TERMS AND CONDITIONS FOR PACNET SERVICES

[Definitions of Initial-Capitalized Terms Appear in Clause M below.]

A. Structure of this Agreement

- This Agreement between Customer and Pacnet applies to a variety of services offered by Pacnet (each, a "Service") and consists of the following:-
 - These general terms and conditions together with the appropriate Country Annex (the "General Terms and Conditions", or "GC");
 - The Specific Terms and Conditions for the applicable Service (the "Specific Terms and Conditions", or "SC");
 - Sales Order Form properly filled out and duly executed by Customer ("Order Form" or "SOF"); and
 - Any other supplemental terms and conditions referred to herein, the Specific Terms and Conditions or Order Form.
- If Customer orders more than one Service from Pacnet, Customer shall be deemed to have a separate Agreement with Pacnet for each Service. The contracting entity of Pacnet is specified in the Order Form and the applicable Country Annex. Customer agrees that the said Pacnet entity may (at its own discretion) enter into this Agreement or provide the Service or any part thereof for and on behalf of its affiliates and in such event the said Pacnet entity may (at its own discretion) also act as the billing and/or collection agent of its affiliates.
- This Agreement will be effective as from the date Pacnet countersigns the Order Form for the Service that Customer has signed and submitted to Pacnet (the "Effective Date").
- Customer may order upgrades of, or modifications to an existing Service, or place orders for additional Services by executing an additional Order Form that references or attaches these General Terms and Conditions and / or the applicable Specific Terms and Conditions. Upon countersignature of this additional Order Form by Pacnet, an additional Agreement will exist between Customer and Pacnet as to such upgraded or additional Services.
- In the event of any discrepancies among a Country Annex, other parts of these General Terms and Conditions, any Specific Terms and Conditions, or the Order Form, the following order of precedence will apply:
 - (highest precedence) Order Form (including any special terms specified in the Order Form or contained in schedules or appendices attached to and referenced therein).
 - Specific Terms and Conditions
 - Country Annex
 - (lowest precedence) other parts of the General Terms and Conditions

B. Term

- Pacnet's Agreement with Customer will be effective as from the Effective Date and will remain in force until the end of the specified term for the Service unless terminated earlier. Customer must specify an initial term for each Service (the "Initial Term", which expression will be used interchangeably with "Minimum Committed Term" or "Minimum Term") in the Order Form; if no Initial Term is specified, the Initial Term will be one year. The Initial Term will commence on the Service Commencement Date for the Service. Upon conclusion of the specified Initial Term, the Agreement will continue in effect indefinitely until terminated by either Party upon thirty (30) days' written notice. Please see Clause G.3 for certain payments, penalties and other conditions that apply to termination in certain circumstances.
- Upon completion of the Initial Term, Customer will have an option to renew the contract with a new term by submitting a new Order Form for Pacnet's acceptance. The new contract term ("Renewal Term") will commence on or within thirty (30) days after the Order Form is accepted and fully executed by Pacnet, or on the RRFS date (as defined in C.2) stated in the new Order Form, whichever is later.

C. Implementation

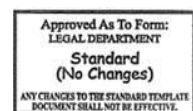
- Prior to any RRFS Date (as defined below) for the Service at any location, Customer may postpone the RRFS date for that location by giving Pacnet prompt written notice to such effect. If the rescheduled RRFS is more than thirty (30) days following the original RRFS Date, Pacnet will have the right to bill Customer for any charges or expenses incurred by Pacnet as a result of the rescheduling. Such expenses may include local access fees. Customer may not postpone the RRFS date for any location by more than sixty (60) days from the original RRFS date.
- Any requested ready for service date for delivery of a Service (the "RRFS Date") set forth in the Order Form or otherwise specified by Pacnet is subject

to Pacnet's standard and expedited delivery intervals for the applicable Service. These intervals may change from time to time. Although Pacnet will use reasonable efforts to install the Service on or before the RRFS Date, Pacnet's inability to do so or to meet any other target date will not constitute a breach by Pacnet under this Agreement. However if Pacnet fails to make any Service available to Customer within ninety (90) days of the applicable RRFS Date, upon ten (10) days' prior written notice to Pacnet, Customer may cancel the Service so delayed. Such cancellation will be Customer's sole remedy under this Agreement.

- If Customer requests delivery of the Service at a location other than a Pacnet POP, Customer will be deemed to have appointed Pacnet or its designated affiliate as agent to arrange local access and local loop service from the requested Pacnet POP to Customer's specified location. Customer must cooperate with Pacnet in securing local access arrangements from local access and service providers. If Pacnet arranges local access or any related service on Customer's behalf in connection with the Service, Customer will be deemed to have agreed to and accepted all the terms and conditions imposed by the local access provider(s) and will indemnify Pacnet for any costs or liabilities that Pacnet incurs under such arrangements (including, without limitation, any cancellation penalties incurred if all or a portion of the applicable Service is terminated or cancelled).
- This clause C will apply to any Renewal Term of Service, each of which renewal will be regarded as a new purchase by executing a new Order Form. The applicable terms and conditions for the Renewal Term shall be indicated in the Order Form for the Renewal Term, in absence of any indication thereof, as set forth in the preceding Order Form.

D. Charges and Payment

- There are generally two components to Pacnet's charges for Service: (i) one-time installation charges (the "Initial Charge"); and (ii) monthly recurring charges ("Monthly Service Charges"). For some Services, Initial Charges and Monthly Service Charges may consist of several components, and Customer may also incur certain additional miscellaneous charges, in each case as specified in the applicable Specific Terms and Conditions. If Pacnet is procuring local access for Customer in connection with a Service, Customer will also incur local access charges. There may be additional separate charges for local access. All charges will be set forth in the Order Form.
- Customer shall also pay certain additional non-recurring charges in connection with certain Services. Such charges will be specified in the applicable Specific Terms and Conditions, or will be invoiced if such costs are incurred with prior notification to Customer.
- All charges are exclusive of any and all applicable taxes including value added tax (if any), and regulatory surcharges (if any). These amounts will be charged separately in Customer's invoices.
- Subject to applicable law, Pacnet reserves the right to vary the charges at any time to reflect changes in the costs Pacnet incurs in providing any Service to Customer. Pacnet will give Customer thirty (30) days' prior written notice of such changes.
- Pacnet will invoice Customer in advance on a monthly basis and the Initial Charge will be reflected in the first invoice Pacnet sends to Customer, together with the Monthly Service Charges for the coming month. Monthly Service Charges will begin to accrue on the Service Commencement Date. Some Services also have usage-based Monthly Service Charge components which will be invoiced in arrears. Pacnet will invoice in the currency specified in (in order of preference) the Order Form, the Country Annex or otherwise, in US Dollars. Customer must pay Pacnet's invoices in full within thirty (30) days of the invoice date ("Due Date"). Notwithstanding any bona fide dispute that Customer may have under this Agreement, Customer shall not be entitled to withhold, set off or deduct any portion of the amount due, but shall pay all amounts due on or before the applicable Due Date. If Customer fails to pay any invoice by its Due Date, (a) any sum that is not paid when due will incur an interest charge of ten percent (10%), or the maximum amount permitted by law, if less, commencing on the Due Date, which default interest rate may be changed by Pacnet in the event of significant fluctuations in applicable interest rates and other economic conditions, and (b) Customer shall be responsible for all collection charges and / or any reasonable attorney fees incurred by Pacnet in collecting the relevant amount from the Customer. Customer will be conclusively deemed to have accepted any invoiced amounts which Customer does not dispute in writing prior to the applicable Due Date.



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6. Customer must pay all taxes, duties, fees, levies and other similar charges and any related interest penalties however designated or imposed by any taxing or governmental authority whether imposed directly on Customer or indirectly on Pacnet as a result of the existence or operation of this Agreement or otherwise relating to the Service. If Customer is required to withhold or to pay such taxes from amounts that Pacnet has invoiced Customer, Customer must pay such additional amounts so that the net amount received by Pacnet after such payment or withholding is equal to the amount invoiced.
7. Customer may be required to give Pacnet a security deposit and/or Customer's use of the Service may be subject to credit limits. In each case the applicable details will be set forth in the Order Form.

E. Modification and Maintenance

1. Pacnet may modify the network or technical specifications applicable to any Service so long as such modifications do not result in any significant changes to the features and functionalities of the Service at the time Customer purchased it.
2. Pacnet may at its sole discretion wholly or partially suspend the Service in connection with network or equipment modification, preventive or emergency maintenance, or as may be required by applicable law. Whenever possible Pacnet will give Customer advance notice of any planned intention to suspend the Service for any period and will provide such details as are available concerning the expected schedule and duration of such a suspension. To the extent possible, Pacnet will discuss expected suspensions with Customer in advance and implement them in a manner which minimizes their impact on Customer and Customer's users.
3. Pacnet provides a coordinated, single point of contact maintenance function for Customer on a 24/7 basis. Pacnet will notify Customer of the details of this point of contact.

F. Customer Responsibilities

In addition to Customer's other obligations under the Agreement Customer must:

1. Procure for Pacnet and its subcontractors and agents access to the premises and points of contact at all Circuit Location Addresses.
2. Provide Pacnet with such additional documentation, such as letters of agency as may be necessary for Pacnet to procure local access for Customer in connection with the Service.
3. Assume all responsibility for all local access arrangements procured by Pacnet in connection with the Service.
4. Upgrade Customer-provided equipment as necessary to support the Service and provide environmentally suitable equipment rooms that comply with applicable laws and other requirements as may be applicable to the relevant equipment or otherwise reasonably specified by Pacnet.
5. Participate in any testing procedures and provide escort services and a secure and safe environment to any personnel of Pacnet or its subcontractors while they are on Customer's premises for purposes of installation, testing or maintenance.
6. To the extent that Pacnet agreed to provide any network terminating or other equipment in connection with the Service, Customer must:
 - i. Acknowledge that title to any equipment placed by Pacnet or Pacnet's subcontractor on Customer's premises in connection with the Service remains with Pacnet or such subcontractor.
 - ii. Be responsible for preparing the location for installation, including providing adequate space, heating and cooling and electrical power.
 - iii. Provide Pacnet or Pacnet's agents with reasonable access to the location for installation and maintenance.
 - iv. Use reasonable care in protecting the equipment from damage or loss and repair or replace any equipment that is damaged or lost due to theft, negligence, intentional acts, unauthorized acts or other causes that are within Customer's reasonable control.
 - v. Upon termination of the Service or the Agreement for any reason, make available all equipment for removal or return in the same condition as originally installed (ordinary wear and tear excepted) or pay a mutually negotiated restoration or retention fee.
 - vi. Hold Pacnet harmless for any interruption of or inability to use the Service where such event is caused by Customer's failure to comply with any of the foregoing.
7. Use the Service only for the purposes for which it is designed and provided.

8. Possess or obtain and maintain in force all necessary licences and permits, and comply with any laws, directives, regulations and conventions which may be applicable to the possession or use of the Service by Customer or third parties using it through Customer.
9. Not use the Service or permit third parties using it through Customer to do so in a manner which:
 - i. violates any applicable law, regulation, treaty or tariff, provided that Pacnet may suspend or terminate the Service if Pacnet has any reason to believe that Customer is in breach of this provision;
 - ii. violates the acceptable usages of any networks, equipment or services which are accessed through Pacnet's network;
 - iii. infringes on the intellectual property rights of others, provided that Pacnet reserves the right to take down or disable the contents or suspend the Service or any part thereof immediately without notice and without liability if Pacnet receives any written complaint from any third party alleging infringement by the Customer, the customer of Customer, or other users through the Service;
 - iv. is fraudulent, deceptive, or misleading;
 - v. is excessively burdensome or otherwise results in network interruptions of any kind; or
 - vi. involves illegal or unauthorized access, exploitation, interruptions or monitoring.

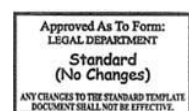
Customer must hold harmless and indemnify Pacnet for any failures to comply with Customer's obligations under this Clause.

10. Comply with Customer's other obligations that are specified in the Country Annex and the Specific Terms and Conditions.

G. Termination

1. Termination for Breach by Customer. If: (i) Customer fails to pay any outstanding charges due under this Agreement within five (5) days from the applicable Due Date; or (ii) Customer commits a material breach of this Agreement and does not remedy the breach within thirty (30) days of Pacnet notifying Customer, Customer will be in default of this Agreement. Once Customer is in default of this Agreement, Pacnet may at Pacnet's sole discretion (without any notice or liability) do any or all of the following with or without any prior written notice: (a) terminate or temporarily suspend all of the Services or just the Services that are the subject of the default; (b) terminate this Agreement; (c) attach, take possession of and/or remove any equipment Customer has in Pacnet's facilities in connection with the Services and, subject to applicable law, sell or otherwise dispose of it in full or partial satisfaction of amounts Customer owes Pacnet under this Agreement; or (d) exercise such other remedies as are available to Pacnet or Pacnet's affiliates at law or in equity. If Pacnet terminates a Service or the Agreement, in addition to all charges accruing to the applicable Service up to and including the termination date, Customer must also pay Pacnet the Termination Charges described in Clause G.3. In the event Pacnet suspends a Service, charges will continue to accrue during the period of suspension until (1) Pacnet terminates the Service or this Agreement or (2) Customer cures the applicable default and Pacnet reactivates the Service.
2. Termination for Breach by Pacnet. If Pacnet commits a material breach of this Agreement and does not remedy the material breach within thirty (30) days of Customer notifying Pacnet (which notice must be addressed to the General Counsel of Pacnet), Customer may terminate the applicable Service. Customer will not be liable for any charges accruing to the Services from the time of termination, provided that Customer proves the alleged material breach of Pacnet. If Pacnet's failure to perform (and no other factors) resulted in Customer not being able to use the Service, Customer will not be liable for any charges accruing to the Service after the date the Service became totally unusable, provided that Customer's proves the alleged usability by sufficient written evidence thereof. Termination of the Service is Customer's sole and exclusive remedy under this Agreement for breach by Pacnet.
3. Termination Charges for Customer Breach or Early Termination for Customer Convenience. For each Service that is terminated prior to the end of the applicable term (see Clause B above), Customer must pay (i) all unpaid Initial Charges, Monthly Service Charges and other charges incurred up to and including the date of termination; (ii) all Monthly Service Charges that would have been payable for the remainder of the Initial Term or Renewal Term; (iii) any taxes payable by Customer (see Clause D.6 above).
4. Termination for Bankruptcy, etc. If any proceeding in bankruptcy, reorganization, insolvency, liquidation or receivership is commenced by or against either Party, the other Party may, upon twenty-four hours' written notice, terminate this Agreement for immediate effect.

H. Third Party Use



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- Customer may resell and permit third parties to use the Service, subject to the following conditions: (i) no such resale or third party use will lessen or modify Customer's obligations under this Agreement; (ii) use of the Service by third parties must comply with this Agreement and all applicable laws; (iii) Customer must possess or maintain all licenses, permits and other requirements that may be applicable to such resale or third party use. Customer must, and hereby agrees to, indemnify, defend and hold harmless Pacnet and its affiliates for and from all liabilities and costs (including reasonable legal fees) arising from any and all claims by any third party in connection with the Services, (including, without limitation, any claims regarding content transmitted using the Services or violation of data protection legislation) regardless of the form of action, whether in contract, tort, warranty, or strict liability. However, Customer has no obligation to indemnify Pacnet against claims for damages for bodily injury or death directly caused by Pacnet's own negligence.
- Notwithstanding anything to the contrary, Pacnet shall be entitled to (and Customer hereby authorize Pacnet to) disclose information of the Customer that is in its or its affiliates' possession to any governmental authority upon receipt of written requests from such authority.
- To the extent Pacnet collects any personal data in the administration and operation of this Agreement, such data will be considered information subject to this Clause K.
- Pacnet will be permitted to process information received from Customer for the purposes of the administration and operation of this Agreement and the provision of the Services. Such processing may also include storage of information in a local or foreign database.

L. General Terms

I. Warranty and Limitation of Liability

- WARRANTY AND DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, PACNET MAKES NO OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE. PACNET FURTHER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE.
- LIMITATION OF LIABILITY.** PACNET'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES AGAINST PACNET FOR ANY DAMAGES ARISING FROM ANY ACT OR OMISSION RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARE LIMITED TO THE FOLLOWING: (i) FOR DIRECT DAMAGES TO REAL OR TANGIBLE PERSONAL PROPERTY, CUSTOMER'S PROVEN DIRECT DAMAGES, SUBJECT TO A MAXIMUM EQUAL TO THE AGGREGATE MONTHLY SERVICE CHARGES PAID BY CUSTOMER UNDER THIS AGREEMENT, (ii) FOR DEATH, DISMEMBERMENT, DISFIGUREMENT, INCAPACITATION OR MUTILATION OR OTHER PERSONAL INJURY, UNLIMITED BUT SUBJECT TO PROVEN DIRECT DAMAGES, AND (iii) FOR EVENTS ENTITLING CUSTOMER TO CREDITS UNDER AN APPLICABLE, "SERVICE LEVEL AGREEMENT", THE SPECIFIED CREDIT ALLOWANCES.
- EXCLUSION OF CONSEQUENTIAL DAMAGES, ETC.** PACNET WILL IN NO CIRCUMSTANCES BE LIABLE TO CUSTOMER OR ANY PERSON CLAIMING THROUGH CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES OR FOR LOST REVENUES, LOSS OF DATA, LOST SAVINGS, OR LOST PROFITS OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE. PACNET WILL IN NO CIRCUMSTANCES BE LIABLE FOR ANY DAMAGES ATTRIBUTABLE TO ANY SERVICE, PRODUCT OR ACTIONS OF ANY PERSON OTHER THAN PACNET, ITS EMPLOYEES AND AGENTS.

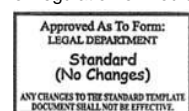
J. Dispute Resolution

- Any disputes concerning the construction or interpretation of this Agreement or a Party's performance of its obligations hereunder, which are not resolved through good faith consultation between the Parties within sixty (60) days of initial notification to the other Party, may thereafter be submitted by either Party to the non-exclusive jurisdiction of the forum specified in the Country Annex.

K. Confidentiality

- From the Effective Date until the expiration of five years following the termination of this Agreement, a Party receiving ("Recipient") information marked or otherwise reasonably understood to be confidential or proprietary of the disclosing Party (hereinafter "Information") must keep confidential and not disclose without the disclosing Party's consent the Information received, and will use the same level of care with respect to the Information as the Recipient employs with respect to its own confidential or proprietary information. For purposes of maintaining the confidentiality of this Agreement, both Parties will be Recipients of the Information contained therein.
- Notwithstanding the above, Information will not be deemed confidential and Recipient will have no obligation with respect to any Information which (i) is already known to Recipient, (ii) is or becomes publicly known through no negligent or wrongful act of Recipient, (iii) is received by Recipient from another source without similar restriction and without breach of this Agreement, or (iv) is furnished to a third party by the disclosing Party without similar restrictions on the third party's rights.

- Publicity and Advertising.** Neither Party may publish or use any advertising, sales promotions, press releases or other publicity which use the other Party's name, logo, trademarks or service marks without the prior written approval of the other Party, provided that Pacnet may list Customer as a user of the Service in advertising and sales promotion materials.
- Governing Law.** The validity, interpretation and performance of this Agreement will be governed by the laws of the jurisdiction specified in the Country Annex.
- Limitation of Actions.** Any legal action arising from or in connection with this Agreement, or any Service provided or work performed hereunder, must be brought within two years after the cause of action arises.
- Title.** Nothing in this Agreement is intended to or will create or vest in Customer any right, title or interest in any Service, its configuration or the underlying equipment and assets used to provide it.
- Severability.** If a court or administrative body holds any provision of this Agreement to be invalid or unenforceable, the relevant provision will be deemed severed from this Agreement, and the remaining provisions will remain in full force and effect and the Parties will promptly negotiate a replacement provision, if necessary.
- Assignment and Subcontracting.** This Agreement may not be assigned or transferred by either Party unless the other Party gives its prior written consent. However, notwithstanding the previous sentence, Pacnet may: (i) freely assign or transfer this Agreement to a company controlling Pacnet, or under common control with us; (ii) freely assign Pacnet's right to receive payments for the Services; and (iii) subcontract a Service or a portion thereof, however Pacnet will remain liable for the performance of any of Pacnet's subcontractors. Any purported assignment that is inconsistent with this Clause will be void. The Parties agree that they will execute all documents and do all such acts reasonably necessary to give effect to this Clause L.6.
- Independent Contractors.** Under this Agreement, both Parties are independent contractors, maintaining complete control over their own personnel and operations. Except as expressly set forth herein in Clauses C.3 and F.2, above, neither Party will become a partner, agent, fiduciary or legal representative of the other through operation of this Agreement.
- No Third Party Beneficiaries.** This Agreement is not intended to be for the benefit of any third party, is not enforceable by any third party, and does not confer upon any third party any remedy, claim or rights.
- Force Majeure.** Neither Customer nor Pacnet may be held responsible for any delay or failure in performance of any part of this Agreement if and to the extent that it is caused by acts of God or nature (including wild animals), war or war-like conditions, mob violence, earthquake, natural disasters, acts or failures to act of any governmental authority, or any other events or circumstances beyond the reasonable control of the applicable Party ("force majeure"). However no force majeure events or circumstances will excuse Customer of Customer's obligation to make any payments that are owed to Pacnet for Services delivered before the force majeure event or that accrue due to Customer's continued use of the Services thereafter. Pacnet will give Customer notice, and Customer must give Pacnet reasonable notice of any events of force majeure and their anticipated effect upon performance under this Agreement. If any event of force majeure affecting a Party lasts for more than three months, either Party may terminate the affected Service upon twenty-four hours' prior written notice to the other party. Neither Party will incur any liability nor other penalties in the event a Service is terminated under the previous sentence, except Customer will be required to pay any outstanding charges in respect of the Services.
- Regulatory Changes.** Services may be subject to laws and regulations in one or more jurisdictions. If the provision of a Service in any applicable jurisdiction is found to violate any applicable law or regulation or would result



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in any additional licensing requirements becoming applicable to Pacnet in any applicable jurisdiction, Pacnet may cancel or suspend the applicable Service upon reasonable prior notice to Customer. Customer must pay any charges applicable to the Service prior to its cancellation or suspension, but will not be liable for any other amounts. Pacnet will make commercially reasonable efforts to restore the Service, or to provide under this Agreement a functionally equivalent Service that is permitted under the applicable laws and regulations of the relevant jurisdiction. Pacnet will agree with Customer separately upon pricing terms for a functionally equivalent substitute Service. Pacnet will not be liable for any other damages or costs incurred due to regulatory changes affecting Pacnet's Services.

11. **Notices.** All notices required or permitted under this Agreement must be made in writing (excluding by email), provided however that any invoice-related notice, suspension or termination notice may be sent by email. All notices will be treated as received by the intended recipient when: (i) delivered in person to the recipient; (ii) delivered with payment to a courier service; (iii) sent by facsimile with receipt confirmed by the sender's equipment; or (iv) sent by email without transmission error notice. Either Party may change their address for notice as shown on the Order Form on ten (10) days' prior written notice to the other Party.
12. **Survivability.** Any provision of this Agreement which by its context is intended to apply after termination of this Agreement will survive its termination.
13. **Waiver.** The waiver by either Party of any breach of this Agreement by the other Party in a particular instance will not operate as a waiver of subsequent breaches of a same or different kind. The failure of either Party to exercise any rights under this Agreement in a particular instance will not operate as a waiver of the Party's right to exercise the same or different rights in any subsequent instance.
14. **English Language.** This Agreement has been executed in the English Language, which language will be controlling in all respects. No translation of the Agreement into any other language will be of any force or effect in the interpretation of the Agreement or in the determination of the intent of the Parties, unless otherwise specified in the Country Annex.

M. Definitions

References to "you", "your" and "Customer" refer to the Customer named on the Order Form and executing this Agreement. References to "we", "us", "our" and "Pacnet" refer to the Pacnet entity named on the Order Form and executing this Agreement. As used in this Agreement, the following terms are intended to have the meanings indicated.

"Pacnet POP" means a network Point of Presence maintained by Pacnet or its affiliates and partners in a city between any City Pairs.

"Availability" of a Service means the monthly percentage which actual service time availability bears to scheduled service time, with scheduled service time

equaling 24 hours/day, 7 days/week (720 hours/month). Scheduled service time will be reduced accordingly by amounts of time for service suspensions, as provided in Clause E.

"Circuit Location Address" means the location specified by Customer in the Order Form for one or both ends of the Service, if the Service is to be delivered at a location outside a Pacnet POP.

"City Pairs" mean, for example, Tokyo-Singapore, Hong Kong-Taipai, Sydney-Seoul, and include such City Pairs as may be available from time to time and are accepted by Pacnet on the Order Form.

"Customer", "you" and "your" refers to the Customer identified on and executing the Order Form.

"Customer Interface" means either (i) the Customer connection to Local Access Interface Equipment at a Circuit Location Address, or (ii) the Customer connection to a Pacnet POP, in each case as specified on the Order Form.

"Effective Date" means the date on which the Order Form is signed by Pacnet.

"Order Form" means the Sales Order Form for the Service that, when executed by Customer and Pacnet, together with the Specific Terms and Conditions and these General Terms and Conditions, comprise the Agreement between the parties.

"Party" means either Pacnet or Customer, and "Parties" means both of Pacnet and Customer.

"Service Commencement Date" means the earliest of: (i) the date when Customer is notified that the Service ordered is being provided to the Customer Interface; (ii) the date when Customer begins using the Service, or (iii) the seventh day following Pacnet notifying Customer that Pacnet have successfully completed all circuit testing on the Service, unless Customer notifies Pacnet during that period of any objections to such test results.

N. Entire Agreement

This Agreement, including the Order Form and Specific Terms and Conditions, is the entire Agreement between the Parties concerning the applicable Service and it supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Service. No change, modification or waiver of any of the terms of this Agreement will be binding unless included in a written agreement and signed by both Parties.

**Australia Country Annex
-- General Terms and Conditions for Pacnet Services --**

Country Specific Terms and Conditions for Australia:

1. **Pacnet contracting entity (see Clause A.2):** Customer's Agreement is with one of the following entities (as specified in the Order Form):
Pacnet Services (A) Pty. Ltd., Level 1, 1 Southbank Boulevard, Southbank VIC 3006, Australia.
Pacnet Internet (A) Pty Ltd, Level 1, 1 Southbank Boulevard, Southbank VIC 3006, Australia.
2. **Invoice Currency (see Clause D.4):** US Dollars, unless otherwise specified in Order Form.
3. **Forum for Dispute Resolution (see Clause J.1):**
The courts of Victoria.
4. **Governing Law (see Clause L.2):**
The laws of Victoria.

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