

Agreement

1. This is an Agreement between Pacific Network Management, (hereinafter referred to as “Provider”) and Client as identified in Schedule B.
2. Provider, and/or its agents or subcontractors, shall provide to Client on-call help desk/technical support services, troubleshooting, and on-site dispatch of technicians (hereinafter “Services”), in response to Client’s issues with the equipment set forth in Schedule A (hereinafter “Equipment”), and as further delineated below.
3. Services. The Services furnished by Provider shall be:
 - a) On-call telephone help desk/technical support as per the service definitions delineated in Schedule B (hereinafter “Service Definitions”). For all issues, queries and support requests relating to the Equipment Client shall first telephone Provider for on-line diagnostic appraisal and rectification, if possible. Usage of Provider’s help desk/technical support by Client shall be measured and count towards Client’s Service Package as delineated in Schedule B.
 - b) If Provider’s help desk determines that an on-site visit is necessary Provider shall dispatch personnel at Provider’s expense within the Service Level Response Time designated in Schedule B. Any on-site visits shall be measured and count towards Client’s Service Package as delineated in Schedule B.
 - c) Scheduled maintenance services as deemed necessary by Provider to ensure continued operation of the Equipment. These include investigation of detected anomalies (whether reported by Client or not), upgrades, and preventative maintenance to software or hardware. Scheduled maintenance activities shall be measured and count towards Client’s Service Package as delineated in Schedule B. Client will be notified at least 24 hours in advance of any scheduled maintenance activities and such activities will be conducted in a manner consistent with the least possible downtime/disruption to Client’s business.
4. Client Responsibilities. In addition to responsibilities for fees hereunder, Client will be responsible for:
 - a) Properly using, caring for, and controlling access to the Equipment.
 - b) Providing prompt notice to Provider of any malfunction or request for Services for the Equipment.
 - c) Permitting Provider access to Client’s facilities consistent with Client’s security and operational requirements.
 - d) Promptly notifying Provider if Client becomes aware of any unsafe conditions or hazardous materials to which Provider’s personnel may be exposed at Client’s Designated Premises (listed in Section A).
 - e) Complying with all applicable government laws and regulations.
 - f) Maintaining accurate Designated Contact information. Client will appoint a Designated point of Contact (hereinafter “Designated Contact”) in Schedule B. Client is solely responsible for providing Provider with accurate and up-to-date contact information for Client’s Designated Contact and alternates. Provider will be relieved of its obligations under this Agreement if Client’s Designated Contact information is out of date or inaccurate due to Client’s action or omission.
 - g) Providing reasonable working conditions for Provider’s personnel that are safe, non-threatening, and non-abusive. Non-compliance by Client shall relieve Provider of its obligations under this Agreement.
5. Services Not Covered by This Agreement. The following are “Other Services” not covered by this Agreement:
 - a) Installation or maintenance of any device not listed in Schedule A, including but not limited to wiring, electrical conduits, peripherals, or accessories.
 - b) Services performed outside of the Designated Working Hours listed in Schedule B or after the term of this Agreement.

Provider reserves the right at any time to designate as “Other Services” certain Services performed for Client or for particular Client equipment to be charged at higher rates (hereinafter “Exceptions”). All Exceptions will be listed in Schedule B and Client shall receive notice of any Exceptions added after execution of this Agreement.
6. Movement of Equipment. If Client desires to move the Equipment, Client must first give Provider 14 days prior written notice. Provider will then evaluate Client’s new location for the Equipment and may choose to (i) continue performance of this Agreement to cover Client’s Equipment at the new location, or (ii) terminate this Agreement without penalty to either Client or Provider. Absent written notice of Provider’s decision to select (i) or (ii), Provider shall be presumed to elect option (i). If Client requests that Provider supervise, inspect, dismantle, remove or reinstall

the Equipment as part of any move, Provider will invoice Client at Provider's hourly rates for Additional or Non-covered Services as listed in Schedule B.

7. Fees and Charges. Provider will invoice Client, and Client agrees to pay, the following:
 - a) Monthly fees related to Client's Service Package as listed in Schedule B.
 - b) Any Additional or Non-covered Services at the rates listed in Schedule B.
8. Payment. Payment for all invoices is due from Client within 30 days from the date of the invoice. Client agrees to pay a late charge of two percent (15%) per month or the maximum lawful rate; whichever is less, for all amounts not paid when due. Provider may also immediately suspend the performance of any Services called for under this Agreement if any amount is more than ten (10) days past due and Provider may continue this suspension of Services until all due and unpaid amounts are paid in full. Any amounts past due after thirty (30) days from the date of the original invoice shall constitute a breach of this Agreement by Client and Provider may terminate this Agreement upon ten (10) days written notice. Client agrees to pay reasonable attorney's fees and court cost incurred by Provider to collect any unpaid amounts owed by Client.
9. Taxes. Prices and fees charged to Client do not include taxes. Client agrees to pay all local, municipal, state and federal taxes which apply to any transaction under this Agreement (except taxes based solely on Provider's net income).
10. Term and Termination. The term of this Agreement shall be as stated in Schedule B, effective on the acceptance of this contract by Client. This Agreement will automatically renew for subsequent one (1) year periods unless terminated by either party by providing the other party at least sixty (60) days advance written notice. Either party may terminate this Agreement at the close of any year hereof without penalty.
 - a) If either party breaches this Agreement the affected party will have the option to terminate this agreement by sending "Notice of Termination of Agreement for Non-Performance" (hereinafter "Notice"). Either party may cancel this agreement by delivering to the other party Notice detailing the exact non-performance in writing, and shall be personally delivered or mailed by certified mail, return receipt requested. The party receiving the Notice shall then have a period of ten (10) days to cure said Notice by providing the facilities, services or payment detailed in the Notice. Should the defaulting party not cure the default within the ten (10) day period, the Agreement shall terminate.
 - b) In the event that this Agreement is so terminated by Client due to Provider's breach of its obligations and failure to cure such breach as set forth in 10(a) above, Client's sole remedy shall be its election to terminate this Agreement without further liability to either party (except for Client's obligation to pay all accrued and unpaid fees outstanding).
 - c) In the event that this Agreement is so terminated by Provider due to Client's breach of its obligations and failure to cure such breach as set forth in 10(a) above, Provider shall be entitled to invoice Client for early termination charges plus any accrued and unpaid fees outstanding at the time of termination. Early termination charges shall be the monthly fees associated with Client's Service Package as listed in Schedule B multiplied by the number of months remaining in the term of this Agreement prior to its termination.
 - d) This Agreement shall terminate, effective immediately, upon delivery of written notice by either party to the other party upon (i) the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party, (ii) the making of an assignment for the benefit of creditors by the other party; or (iii) the dissolution of the other party.
11. Liability. Neither of the parties to this Agreement nor their employees, affiliates, agents, officers or directors will be liable to the other for losses or damages or for any incidental, consequential, direct, indirect, punitive, exemplary or special damages of any nature and however caused, including, without limitation, loss of use, delays, loss of data, lost business opportunities or lost profits, revenue, or savings (hereinafter "Losses or Damages") arising under and in connection with this Agreement, or the performance thereunder, from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission by the other party, its employees, affiliates, agents, officers or directors whether based on breach of warranty, negligence or any other theory of liability.

Limitation of Liability. Provider's total cumulative liability arising under and in connection with this Agreement, including but not limited to liability arising from mistakes, accidents, omissions, delays, errors or defects in providing Services under this Agreement or in transmission in the provision of Services hereunder, or under any other theory of law, will in no event exceed the fees paid by Client under this Agreement for an Average Month during the previous year. Average Month fees are calculated by adding the total fees paid by Client for Services (labor only, excluding all equipment or hardware charges) for the most recent twelve (12) month period, and dividing the total by twelve (12).

Example: Total fees paid by Client for Services in the most recent twelve month period totals \$12,000.00. $\$12,000.00 / 12 = \$1,000.00$. This limitation of liability applies to any and all claims against Provider. **Client acknowledges that these limitations of Provider's liability are a fundamental part of this Agreement and that Provider would not provide Services without Client's consent to them.**

Provider shall not under any circumstances be liable for any third party claims against Client or any claim from a customer or end user of a party for Losses or Damages arising under and in connection with this Agreement, or the performance thereunder, from any breach or partial breach of the provisions of this Agreement, or the use or inability to use the Equipment, or any portion thereof, even if Provider has been advised of the possibility of such damages and even if the limited remedies set forth herein are found to fail in their essential purpose, and however caused (including as a result of negligence, breach of warranty, or any other theory of liability).

12. Limit of Warranty. The warranties and remedies set forth in this Agreement constitute the only warranties and remedies with respect to this Agreement. Such warranties are in lieu of all other warranties, written or oral, statutory, express or implied, including, without limitation, the warranties of merchantability and fitness for a particular purpose or use. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES CONCERNING THE EQUIPMENT OR THE SERVICES RENDERED HEREUNDER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.
13. Force Majeure. In no event will a party to this Agreement have any claim or right against the other party for any failure to perform its obligations under this Agreement if such failure of performance is caused by or is the result of causes beyond the reasonable control of such other party, including, but not limited to such causes as, act of God, fire, flood or other natural catastrophe; explosion, cable dig-up or cut by a third party; laws, orders, rules, regulations, directions or action of governmental authorities having jurisdiction or any civil or military authority; national emergency, insurrection, riot or war; or strike, lockout, work stoppage or other labor difficulty; vandals or hackers, or other similar occurrence beyond the control of a Party. The time for that party's performance will be extended for the period of the delay or inability to perform due to such occurrence, provided, however, that Client will not be excused from the payment of any sums of money owed by Client to Provider. However, if a party suffering a *force majeure* event is unable to cure that event within sixty (60) days, the other party may terminate the Agreement upon written notice without penalty to either party.
14. Resolution of Disputes. The parties hereto desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, action to collect any unpaid amounts due to Provider, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
 - a) At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet within thirty (30) days and negotiate in good faith to resolve any dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications that are not prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.
 - b) If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in Josephine County, Oregon. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgement upon the award rendered by the arbitrator may be entered in

any court having jurisdiction. The arbitrator shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by the Agreement and in no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages.

- c) Each party shall bear its own costs of these procedures. A party seeking discovery shall reimburse the responding party the costs of production of documents (to include search time at the rate of Fifteen dollars (\$15.00) per hour and reproduction costs). The fees of the arbitration and the arbitrator shall be equally split between the parties.
- 15. This agreement will be governed by and construed in accordance with the laws of the State of Oregon.
- 16. Publicity. Client hereby permits Provider to identify Client as a customer of Provider. Either party shall be permitted to use the other party's name in connection with proposals to prospective customers, and to otherwise refer to the other party in print or electronic forms for marketing or references purposes.
- 17. Confidential Information. All written information labeled as proprietary or confidential that is disclosed by either party to the other party shall remain the sole property of the disclosing party. Each party agrees that it shall not disclose, use, modify, copy, reproduce or otherwise divulge such confidential information other than that to fulfill its obligations under this Agreement. The prohibitions contained in this section shall not apply to information (a) already lawfully known to or independently developed by the receiving party, (b) disclosed in published materials, (c) generally known to the public, or (d) lawfully obtained from any third party. Neither party shall disclose to third parties, other than its agents and representatives on a need-to-know basis, the terms of the Agreement or any addenda hereto without the prior written consent of the other party, except either party shall be entitled to disclose (i) such terms to the extent required by law; and (ii) the existence of the Agreement.
- 18. Waiver. The failure of any Party to give notice of default or to enforce or insist upon compliance with any of the terms of this Agreement will not be considered the waiver of any other term or condition of this Agreement.
- 19. There is no partnership or joint-venture relationship expressed or implied in this Agreement. Neither party will have the authority to enter contracts on behalf of or bind the other, and this Agreement does not constitute either Party as the agent or legal representative of the other.
- 20. The rights afforded by this Agreement may be assigned by either party upon the consent of the other, such consent not to be unreasonably withheld. Should all parties agree to assignment, all provisions of this Agreement will be held in full force and be binding on the assignee(s).
- 21. This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect. Any promises, representations, offers, or other communications not expressly set forth in this Agreement are of no force or effect. Any modification of this Agreement will be effective only if it is in writing and signed by both parties.
- 22. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 23. This Agreement will be fully binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

All provisions of this Agreement have been read and understood and are hereby accepted as indicated by the signature below of the authorized representatives of each party.

Provider:

Pacific Network Management
323 SE Riverside AV
Grants Pass, OR 97526

Client:

BatteryStuff.com
276 Tech Way
Grants Pass Oregon, 97526

Schedule A
EQUIPMENT LIST

Equipment:

Workstations:

- BS-Tech-1
- BS-Tech-2
- Packing Station 1
- Packing Station 2
- Rhonda HP
- Steve
- Robin
- James
- Sidekick

Servers:

- Server2008
- New Server

Network Equipment:

- All Network Equipment from Charter Modem. Not including Cabling/Inside Wiring.

Client's Designated Premises. All Equipment shall be located at the following Client Designated Premises:

BatteryStuff.com
276 Tech Way
Grants Pass, Oregon 97526

Schedule B
SERVICE DEFINITIONS

BatteryStuff.com
276 Tech Way
Grants Pass, Oregon 97526

Description of Services

Provider shall deliver help and technical support to Client through Provider's on-call help desk for all issues, queries, support requests, and troubleshooting (hereinafter "Technical Support") that relate to the Equipment listed in Schedule A. When determined necessary by Provider's help desk one or more technician(s) may be dispatched to Client's Designated Premises (as listed in Section A).

- 1) Technical Support requests not related to the Equipment listed in Schedule A may be provided at Provider's discretion and charges for Additional or Non-Covered Services may be invoiced to Client. Provider will inform Client of any additional charges before such Technical Support is provided.
- 2) Technical Support services are provided only to Client's employees or designated agents.
- 3) Client's Equipment listed in Schedule A is the property of Client.
- 4) Provider, at its sole discretion, may provide Client with Technical Support services outside of the Designated Working Hours should Client request this. An extra charge may be invoiced to Client for any Technical Support services provided outside of Designated Working Hours and Client will be notified of the extra charge before any such Technical Support is provided.

Service Package

- 1) **Monthly Fee: \$ 195.00**

Rate for Covered Services: \$65.00 /hour

- 2) Client shall receive 180 minutes of use per calendar month at no charge of Provider's on-call help desk/Technical Support services during the Designated Working Hours. Provider's on-call help desk may be contacted by telephone, e-mail, or fax but emergency or mission-critical issues must be reported by telephone. If Client's use of Provider's on-call help desk is greater than 180 minutes in a calendar month and upon specific request by Client then the additional use will be deducted from the Client's minutes for the next month up to the total available free minutes for that month. After the total available free minutes for the next month have been used Client will then be invoiced for additional use at the Telephone, e-mail, or fax Technical Support Hourly Rate for Additional Services. Client's free minutes of use that are not used are not cumulative and cannot be accrued for use in future months.
- 3) Client shall receive 180 minutes every calendar month of on-site support by Provider's personnel at no charge to Client at Client's Designated Premises during the Designated Working Hours. On-site support shall be provided only after Client has contacted Provider's Technical Support help desk and the help desk has determined that an on-site visit is necessary. If Client uses more than 180 minutes of on-site support in any calendar month and upon specific request by Client then the additional use may be deducted from the Client's minutes for the next month up to the total available free minutes for that month. After the total available free minutes for the next month have been used Client will then be invoiced for additional use at the Hourly Rate for Covered Services or Hourly Rate for Additional or Non-Covered Services as applicable. Client's free minutes of use that are not used are not cumulative and cannot be accrued for use in future months.
- 4) **Travel Time:** For each dispatch of Provider's personnel related to assisting Client, whether to Client's Designated Premises or other location such as pick-up of replacement equipment, etc., the first fifteen (15) minutes of travel time shall not be counted against Client's on-site support minutes. Additional travel time minutes shall be deducted from Client's on-site support minutes as in "Service Package" item 3 above.

Term

The term of this Agreement shall be 12 months.

Designated Working Hours

Monday through Friday, 9:00am to 5:00pm Pacific Time, excluding Holidays (Holidays are: New Year's Day, Easter, Memorial Day, Independence Day, Thanksgiving, Christmas).

Service Level Response Time

- 1) Telephone, e-mail, or fax Technical Support. Generally Client will be provided with telephone or e-mail Technical Support as soon as Client contacts Provider's help desk. In the event Provider is unable to immediately deliver telephone or e-mail Technical Support it shall be provided within one (1) hour of the initial contact by Client.
- 2) On-site Technical Support. After Provider's help desk has been contacted by Client and determined that an on-site visit is necessary Provider will dispatch technician(s) within 4 hours (not including travel time). On-site Technical Support shall only be provided to Client's Designated Premises as listed in Section A.

Hourly rates for Additional or Non-covered Services

Telephone, e-mail, or fax Technical Support: \$35/hour

On-site Technical Support:

Non-Covered Services: \$65/hour

Technical Support provided after Designated Working Hours:

Covered Services: \$90/hour

Non-covered Services: \$120/hour

Services provided on Holidays: \$140/hour

Exceptions

1. Covered Services shall not include the following: programming or script writing, system administration or network engineer services for corporate-type networks or enterprise-type equipment (DNS or domain issues, firewalls, routers, etc.). These services shall be billed at \$65/hour during Designated Working Hours and \$90/hour after Designated Working Hours.

Client's Designated Contacts

Primary Contact:

Name Daytime Telephone

Home Telephone Cell Phone/Pager

Email Address

Alternate Contact #1:

Name Daytime Telephone

Home Telephone Cell Phone/Pager

Email Address

Alternate Contact #2:

Name

Daytime Telephone

Home Telephone

Cell Phone/Pager

Email Address

Notices

All notices required or permitted under this Agreement will be in writing and personally delivered or mailed, and addressed as follows:

Provider:

Pacific Network Management
323 SE Riverside AV
Grants Pass, OR 97526

Client:

BatteryStuff.com
276 Tech Way
Grants Pass Oregon, 97526