

## Terms and Conditions for RocketFailover Service

**Last Revised: October 6, 2017**

1. **Introduction.** These are the Terms and Conditions for RocketFailover Service between the customer (“you”) and R & D Industries, Inc. d.b.a. Thinix (“Thinix”, “we” or “us”). “Service” refers to the failover internet access services, system monitoring services, data services, equipment rental services or any other RocketFailover product or service that you purchase from Thinix, which in each case is described in a proposal fully signed by you and Thinix (the “Proposal”). Your “Agreement” with us for the Services includes each of the following documents: (a) these Terms and Conditions, and (b) the Proposal. Thinix reserves the right to refuse service to anyone based upon a determination we make as to your ability to complete your payment obligations under this agreement.

2. **Priority of Documents.** In the event of a discrepancy between the Proposal and these Terms and Conditions, the Proposal shall control with respect to any business terms set forth in the Proposal, and the Terms and Conditions shall control with respect to any legal terms set forth therein.

### 3. **Term; Termination; Early Termination Fee**

a. **Term.** With respect to each Service, this Agreement is effective on the day we activate that Service and continues for the initial term (the “IT”) set forth in the applicable Proposal for that Service, or if no IT is included in such Proposal, for a period of thirty-six (36) months. Thereafter, the term for the Service shall automatically renew for subsequent terms (each a “Subsequent Term” and together with the IT, the “Term”) of twelve (12) months each until terminated in a manner as provided below.

#### b. **Termination.**

i. You may terminate the Agreement between the parties or all or a portion of your Services at any time by notifying Thinix. Termination by you shall be effective immediately unless you request a later termination date. Your monthly recurring Services and the applicable charges for those monthly recurring Services shall be prorated to coincide with the termination date. Similarly, any portion of the terminated Service that has a specified monthly allotment (i.e., cellular data) shall also be prorated based upon the termination date, and depending on the amount of Service that you have used during the month of termination, such a proration may result in you incurring overage charges.

ii. Thinix may terminate or suspend the Agreement between the parties or all or a portion of your Services at any time without notice if (A) you breach any portion of the Agreement or (B) Thinix ceases to provide such Service in your area. Termination by Thinix shall be effective immediately unless we notify you of a later termination date.

c. **Early Termination Fee.** If the Agreement or all or a portion of your Services is terminated by either party for any reason during the IT other than pursuant to (i) the “Changes to Relationship” paragraph below or (ii) Thinix ceasing to provide that Service in your area, Thinix shall have the right to assess an Early Termination Fee (“ETF”) against you in connection with such termination. Each line of Service shall be subject to a separate ETF. The amount of the ETF shall be prorated over the IT of the Agreement using a straight-line calculation where the initial amount of the ETF is multiplied by a fraction where (i) the numerator is the number of full months that have been completed during the IT prior to the effective date of termination, and (ii) the denominator is the total number of months during the IT. By way of examples and not of limitation, an initial ETF of

\$350.00 for a two (2) year IT will be reduced by \$14.58 each month until the ETF reaches \$0, and an initial ETF of \$150.00 for a two (2) year IT shall be reduced by \$6.25 each month until the ETF reaches \$0. Upon termination for any reason, you are responsible for the payment of all charges. If your Service is reinstated in Thinix's sole discretion, you may be charged a reactivation fee, which will be in an amount equal to twice your monthly service charge.

- d. **Default Term and Termination Fee.** Except as otherwise listed in the applicable Proposal, (i) the initial term (the "IT") shall be for a period of thirty-six (36) months and (ii) the initial ETF shall be \$360.00.
  - e. **Changes to Relationship.** We may amend any portion of the Amendment at any time by providing notice to you. If we make Material Changes to the Agreement that you do not agree with, you may cancel your Agreement without incurring an ETF by notifying us within 30 days after notice to you of the change; provided, however, that you shall remain responsible for all other charges, fees and expenses incurred in connection with each Service through the termination date of that Service. For the purposes of this subparagraph, the term "Material Changes" shall mean only those changes that result in an increase to the rates that we charge you for Services under your Proposal; provided, however pricing changes resulting from any of the following shall not constitute a Material Change: (i) increases to charges permitted to be collected by any governmental authority (such as for the FCC universal service fund), (ii) charges permitted to be passed through the expense of taxes imposed on any Service, and (iii) charges which relate to other Services for which you are under no term commitment; provided, further, that other non-monetary changes to any portion of the Agreement shall not constitute a Material Change. If you use the Service after the 30-day period, you agree to be bound by any Material Changes.
  - f. **Effect of Termination.** Any right or obligation of the parties in the Agreement which, by its nature, should survive termination or expiration of the Agreement, will survive any such termination or expiration of the Agreement.
4. **Your obligations.** You shall:
- a. Respond promptly to any reasonable requests from us for instructions, information or approvals we require to provide the Services.
  - b. Cooperate with us in our performance of the Services and provide access to your premises, employees, contractors, and equipment as required to enable us to provide the Services.
  - c. Take all steps necessary, including obtaining any required licenses or consents, to prevent customer-caused delays in our provision of the Services.
  - d. Pay all legitimate fees, charges and expenses for all Services you receive and you shall be responsible for returning any Thinix-owned Equipment at the end of the Term of the Service for which the Equipment was provided.
  - e. Keep all accounts you have with us in good standing in order to be eligible for Service. If any account is not in good standing, all accounts and any Services provided for such accounts are subject to suspension and/or termination.
  - f. Inform us of any changes in your customer address, or business address for Services, which must always be within our service areas

- g. Not resell any Service to any third parties, and you acknowledge and agree that the Services are furnished for your use only.
- h. Not use any Service for any unlawful, improper, harassing or abusive purpose or in such a way that interferes, or is reasonably likely to interfere with Thinix's network, business operations, employees or customers.

## 5. Fees and Expenses.

- a. **Fees.** In consideration of our provision of the Services and the rights granted to you under the Agreement, you shall pay when due the fees, charges, and expenses as described in each applicable Proposal or in the Agreement. Fees, charges and expenses include, without limitation, telecommunications-related charges (such as monthly access, roaming, toll, long distance, directory assistance, Application Charges and Data Network Usage Charges); charges for other discretionary goods and services offered by Thinix or third parties for which we bill; regulatory cost recovery charges; surcharges; and taxes. Regulatory cost recovery fees, surcharges, and taxes are subject to change without notice. For the purposes of this Section, "Application Charges" shall mean the non-recurring and/or monthly subscription fees incurred when you purchase data applications from us or third parties for which we bill, and "Data Network Usage Charges" shall mean the charges for transferring data (i.e., downloading applications, accessing the Internet, etc.) rendered in units of kilobytes or megabytes, where each partial kilobyte of data transferred will be rounded up and billed as a full kilobyte.
- b. **Billing and Payments.** Unless otherwise specified in an applicable Proposal, we will (i) bill you in advance each month for the next month's recurring service charges and (ii) bill you in arrears for usage charges not covered by your recurring service charges. The due date for fees, charges and expenses will be as set forth on each monthly bill. Thinix reserves the right to change your billing cycle dates and the corresponding bill due dates upon thirty (30) days' prior notice. Itemized billing statements are not available unless you specifically request them in writing, in which event, we shall have the right to charge you a \$45.00 statement fee for each request for an itemized billing statement.
- c. **Credit Information.** You authorize consumer reporting agencies to periodically furnish Thinix with your consumer report. You authorize Thinix to periodically disclose your account information and payment history to consumer reporting agencies. You authorize third party agents or resellers of the Thinix service to receive notice of decisions made from a review of your consumer credit report.
- d. **Initial Fee; Deposits.** Without limiting the foregoing, Thinix may in its sole discretion require you to make an upfront payment for up to the first two (2) month's prorated service charges, which payment must be received in full by Thinix before Thinix shall be obligated to deliver any Equipment to you or begin delivery of any applicable Service. Thinix may also require a deposit from you to guarantee payment of charges for Services and from time-to-time may increase the amount of the required deposit based on your usage and payment history. Deposits will only be returned to you after a minimum of twelve (12) consecutive months of satisfactory payments to Thinix. Thinix may apply deposits or payments to any charges you owe us on any account. Interest will not be paid on deposits unless required by law.
- e. **Late Payments.** Payments are late if not received by Thinix by the due date shown on the monthly bill. All late payments shall bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly; provided,

however, in any event no penalty for a late payment shall be less than \$5.00 per occurrence. In addition to all other remedies available under this Agreement or at law (which Thinix does not waive by the exercise of any rights hereunder), Thinix shall be entitled to suspend the provision of any Services if you fail to pay any amounts when due. We may charge you a returned check fee for a check returned for any reason. We may charge a processing fee of up to \$5.00 on any credit balance due upon termination of Service for any reason. You agree to reimburse Thinix for its costs, including reasonable attorneys' fees, collection fees and similar expenses incurred by Thinix with respect to collection of payment (except where prohibited by law).

- f. YOU MAY SEEK A CREDIT OR REFUND FOR ERRORS IN BILLING FOR UP TO 180 DAYS (OR AS OTHERWISE PROVIDED BY CA LAW FOR CA CUSTOMERS) AFTER ISSUANCE TO YOU OF THE BILL ON WHICH THE ERROR IS CONTAINED BY CONTACTING THINIX AS PROVIDED ON YOUR BILL. YOU WILL HAVE WAIVED YOUR RIGHT TO DISPUTE THE BILL AND TO BRING, OR PARTICIPATE IN, ANY LEGAL ACTION RAISING SUCH DISPUTE IF YOU FAIL TO DISPUTE THE CHARGE ON YOUR BILL WITHIN 180 DAYS (OR AS OTHERWISE PROVIDED BY CA LAW FOR CA CUSTOMERS) AFTER THE ISSUANCE OF THE BILL. WE MAY ALSO BACK BILL YOU FOR ANY ERROR THAT RESULTS IN AN UNDERBILLING TO YOU WITHIN 180 DAYS OF THE ISSUANCE OF THE BILL THAT SHOULD HAVE REFLECTED THE UNDERBILLED CHARGE.
6. **Leased Devices.** We may lease certain devices to you (the "Equipment") in order to deliver certain Services during the Term for such Services, which leased Equipment, if any, is described in your Proposal. In connection with leasing Equipment from us, you agree as follows:
    - a. **Restrictions.** You shall not remove the Equipment from the addresses or locations specified in the applicable Proposal without prior written approval of Thinix. Thinix shall have the right, but not the obligation, to enter your premises at all reasonable times to locate and inspect the state and condition of the Equipment. Unless otherwise agreed to by the parties, you shall, at your expense, keep and maintain the Equipment in a good state of repair, normal wear and tear excepted, and shall use the Equipment only for its intended purpose and follow our instructions regarding the use and maintenance of the Equipment.
    - b. **Return of Equipment.** If you do not return the Equipment to us within ten (10) days of the effective date of termination of the Service for which such leased Equipment is provided, in the condition and on the terms and conditions of this Section 5, you shall be fully responsible the lesser of (i) the entire replacement cost of all unreturned Equipment or (ii) the greatest amount that Thinix can recover under applicable law. Except where a Proposal indicates that Thinix shall be performing such service, you shall, at your risk and expense, timely (i) deinstall, inspect, and properly pack the Equipment; and (ii) return the Equipment, freight prepaid, to us by delivering the Equipment on board such carrier as we may specify. You shall cause the Equipment returned for any reason under this Agreement to (i) be free and clear of all liens (other than liens of Thinix) and rights of third parties; (b) be in the same condition as when delivered to you, ordinary wear and tear excepted; (c) have all your insignia or markings removed or painted over and the areas where such markings were removed or painted over refurbished as necessary to blend with adjacent areas; and (d) be in compliance with applicable law.
    - c. **Ownership of Equipment.** Title to the Equipment remains with Thinix throughout the Term, and you shall not acquire any right, title, or interest in the Equipment. You shall not pledge or encumber the Equipment in any way without our prior written consent, which we may withhold in our sole discretion. You shall bear all risk of loss, damage, destruction, theft, and condemnation to or of the

Equipment from any cause whatsoever ("Loss") until the Equipment has been returned to us. You shall notify us in writing and reimburse us within ten (10) days of any such Loss.

d. **Limited Equipment Warranty.** WE WARRANT THAT FOR SO LONG AS YOU LEASE THE EQUIPMENT FROM US, THE EQUIPMENT WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP. OUR RESPONSIBILITY FOR DEFECTIVE EQUIPMENT IS LIMITED TO REPAIR, OR REPLACEMENT AS DESCRIBED BELOW:

- i. We provide this limited warranty on the Equipment only to you. It does not extend to any subsequent owner or other transferee of the product. This limited warranty covers defects in materials and workmanship of the Equipment for the Term of the RocketFailover Services.
- ii. This limited warranty does not cover any damage due to: (a) transportation; (b) storage; (c) improper use; (d) failure to follow the product instructions or to perform any preventive maintenance; (e) modifications; (f) unauthorized repair; (g) electrical surges; (h) theft or vandalism; (i) atmospheric conditions; (j) normal wear and tear; or (k) external causes such as accidents, abuse, or other actions or events beyond our reasonable control.
- iii. With respect to any covered Equipment defect during the warranty period, we will, in our sole discretion, either repair or replace such product (or the defective part) free of charge; provided, however, that you will be responsible for shipping and handling fees to return defective Equipment to us and for us to provide the repaired or replacement Equipment to you. We have no obligation to provide you with any temporary or substitute equipment while we repair or replace the defective Equipment. To obtain warranty service, you must call 888-484-4649 or or email us at support@thinix.com, or at such other telephone number or email address as may be set forth on our website at www.thinix.com.
- iv. THE REMEDIES DESCRIBED ABOVE ARE YOUR SOLE AND EXCLUSIVE REMEDIES AND OUR ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY DESCRIBED IN THIS SUBSECTION (D). OUR LIABILITY SHALL UNDER NO CIRCUMSTANCES EXCEED THE LIMITATION OF LIABILITY DESCRIBED IN SECTION 13 OF THESE TERMS AND CONDITIONS, NOR SHALL WE UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OR LOSSES, WHETHER DIRECT OR INDIRECT IN CONNECTION WITH THIS LIMITED WARRANTY.

e. **Security Agreement.** You authorize Thinix to file precautionary Uniform Commercial Code ("UCC") financing statements and other similar filings and recordings with respect to the leased Equipment. You agree not to file any corrective or termination statements or partial releases with respect to any UCCs or other similar filings or recordings filed by Thinix in connection with the Equipment except (i) if we fail to file a corrective or termination statement or release on request from you after the expiration or earlier termination of this Agreement or the applicable Service for which the leased Equipment has been provided or (ii) with our consent.

7. **NO OTHER REPRESENTATIONS OR WARRANTIES; NON-RELIANCE.**

a. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THESE TERMS AND CONDITIONS AND ANY APPLICABLE PROPOSAL, (A) NEITHER THINIX NOR ANY OTHER PERSON ON BEHALF OF THINIX BEHALF, HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR

WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND YOU ACKNOWLEDGE THAT YOU HAVE NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THINIX, OR ANY OTHER PERSON ON THINIX'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THESE TERMS AND CONDITIONS AND ANY APPLICABLE PROPOSAL.

b. EXCEPT AS OTHERWISE PROVIDED HEREIN, THINIX DOES NOT MANUFACTURE EQUIPMENT, AND DOES NOT PROVIDE ANY WARRANTIES WITH RESPECT TO ANY EQUIPMENT OR SOFTWARE.

8. **Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all Services, documents, work product and other materials that are delivered to you in connection with any Services, or prepared by or on behalf of the Thinix in the course of performing the Services (collectively, the "Deliverables") shall be owned by us (or any third-party licensors licensing such items to us). To the extent permitted, we hereby grant you a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable you to make reasonable use of the Services.

9. **iStatus Dashboard.**

a. **Software.** Subject to the business terms set forth on the Proposal, during the Term of the RocketFailover Service, Thinix will use commercially reasonable efforts to provide you with electronic access and use of the iStatus Dashboard software ("iStatus Software") for 24 hours per day, seven days per week every day of the year, except for: (a) scheduled downtime, (b) service downtime or degradation due to a Force Majeure Event, (c) any other circumstances beyond Thinix's reasonable control, and (d) any suspension or termination of your access to or use of the iStatus Software as permitted by this Agreement. The term "Software" as used in these Terms and Conditions shall include the iStatus Software.

b. **Authorization.** Subject to and conditioned on your timely payment of the charges, fees and expenses for the RocketFailover Service and compliance and performance in accordance with all other terms and conditions of all portions of the Agreement, Thinix hereby authorizes you to access and use, during the Term of the RocketFailover Service, the iStatus Software; provided, however, to the extent all or any portion of the iStatus Software has been licensed to us by any third party, the authorizations granted by us to you in this subparagraph (b) shall be limited by and shall not exceed our rights under our third party licenses. The authorization provided to you is non-exclusive and non-transferable.

c. **Authorization Limitations and Restrictions.** You shall not, and shall not permit any other person to, access or use the iStatus Software except as expressly permitted by the Agreement. For purposes of clarity and without limiting the generality of the foregoing, you shall not, except as the Agreement expressly permits:

i. Copy, modify or create derivative works or improvements of the RocketFailover Services or iStatus Software.

ii. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any RocketFailover Services or iStatus Software to any person.

- iii. Reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the RocketFailover Services or iStatus Software, in whole or in part.
  - iv. Bypass or breach any security device or protection used by the RocketFailover Services or iStatus Software.
  - v. Input, upload, transmit or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code (including but not limited to using any malicious software or malware designed to infiltrate a network or computer system such as spyware, worms, Trojan horses, rootkits, ransomware, and/or crimeware) that defeats, obstructs or penetrates, or attempts to defeat, obstruct or penetrate the security measures of Thinix's network or systems, or another entity's network or systems; that accesses, or attempts to access without authority, the accounts of others; or that adversely affects the ability of other people or systems to use the RocketFailover Service or any other services offered by Thinix.
  - vi. Remove, delete, alter or obscure any trademarks, specifications, documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any RocketFailover Services or iStatus Software, including any copy thereof.
  - vii. Access or use the RocketFailover Services or iStatus Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Rights or other right of any third party, or that violates any applicable law.
  - viii. Access or use the RocketFailover Services or iStatus Software for purposes of competitive analysis of the RocketFailover Services or iStatus Software, the development, provision or use of a competing software service or product or any other purpose that is to our detriment or commercial disadvantage.
  - ix. Access or use the RocketFailover Services or iStatus Software in, or in association with, the design, construction, maintenance, operation of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the RocketFailover Services or iStatus Software could lead to personal injury or severe physical or property damage.
- d. **Corrective Action and Notice.** If you become aware of any actual or threatened activity prohibited by subsection (c) above, you shall immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the RocketFailover Services or iStatus Software and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify us of any such actual or threatened activity.
  - e. **Fees.** The fees, charges, and any other expenses that may be incurred in connection with the RocketFailover Services are described in the Proposal.
  - f. **Scheduled Downtime.** We will use commercially reasonable efforts to schedule routine maintenance of the RocketFailover Service and iStatus Software outside of normal business hours.

g. **Data Backup.** WE HAVE NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF ANY OF YOUR DATA THAT MAY BE SAVED USING THE HOSTED SERVICES, AND IT IS YOUR SOLE RESPONSIBILITY TO ENSURE AND MAINTAIN REGULAR DATA BACKUPS OR REDUNDANT DATA ARCHIVES.

10. **Customer Control and Responsibility.** You have and will retain sole responsibility for: (a) all of your data, including its content and use; (b) all information, instructions and materials provided by or on behalf of you in connection with the RocketFailover Services; (c) your information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by you or through the use of third-party services ("**Customer Systems**"); and (d) all access to and use of the RocketFailover Services and iStatus Software directly or indirectly by or through the Customer Systems, with or without your knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

11. **Connectivity.** Thinix makes no warranties or guarantees regarding the RocketFailover Service's service levels or interconnectivity with the internet.

12. **Compliance with Laws.** You agree to comply with applicable laws with respect to your use of the RocketFailover Service. You agree not to use the RocketFailover Service in any manner that violates any law, rule, statute, regulation, or that defames, libels, or infringes the rights of others, or that interferes with or diminishes the use and satisfaction of the RocketFailover Service or any other services offered by Thinix, or that encourages the committing of any criminal offense. You agree you won't use the RocketFailover Service in a manner that creates "denial of service" attacks against a network host or individual user or for "spam" or unsolicited commercial or bulk email (or activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk e-mail), or that resells the RocketFailover Service, or in violation of the third party licenses, policies, or rules.

13. **Limitation of Liability.**

a. IN NO EVENT SHALL THINIX BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR ATTORNEYS FEES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT THINIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b. IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE CHARGES YOU INCURRED FOR THE AFFECTED SERVICES OR EQUIPMENT DURING THE AFFECTED PERIOD.

14. **Force Majeure.** Thinix shall not be liable or responsible to you, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Thinix including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other

labor disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdowns, power outages, atmospheric or topographical conditions or system capacity limitations (each such event, a “**Force Majeure Event**”).

15. **Privacy.** In the course of providing Services to you, we may collect, process, and share personal information about you or your account consistent with our privacy policy, available at <https://www.thinix.com/legal-privacy-policy> without further specific notice to you. We reserve the right to update the privacy policy from time to time by posting the revised policy on <https://www.thinix.com>. Your continued use of the Services represents your assent and agreement to such privacy policy.

16. **Miscellaneous.**

a. **Data.** We may periodically, without notice, remotely change or update your software, applications or programming for your Equipment. Any data usage that is incurred in managing your Equipment does count against your monthly data usage, however, data amounts for such management purposes is typically minimal.

b. **Entire Agreement.** The Agreement, which is comprised of these Terms and Conditions and any applicable Proposal, including and together with any related exhibits, schedules, attachments and appendices thereto, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

c. **Notices.** Unless otherwise directed by Thinix, all notices to be delivered to Thinix in connection with the Agreement must be sent to Thinix, Attn: Internet Notices, 812 10th Street, Milford, IA 51351. Notice to you shall be deemed delivered if sent to your address as set forth in your Proposal.

d. **Severability.** If any term or provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the court may modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

e. **Waiver.** No waiver by any party of any of the provisions of the Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

f. **Assignment.** You shall not assign, transfer, delegate or subcontract any of your rights or delegate any of your obligations under any portion of the Agreement without our prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve you of any of your obligations under the Agreement. We may assign any of our rights or delegate any of our obligations without customer's consent.

g. **Successors and Assigns.** The Agreement is binding on and inures to the benefit of the parties to the Agreement and their respective permitted successors and permitted assigns.

h. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in any portion of the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

i. **No Third-Party Beneficiaries.** The Agreement benefits solely the parties to this Agreement and their respective permitted successors and assigns and nothing in the Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

j. **Arbitration.**

i. **Scope, governing rules.** Any controversy or claim arising out of or relating to any portion of the Agreement, or the breach thereof, shall be determined by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Mediation Procedures ("Commercial Rules"), as may be modified by the Agreement.

ii. **Authority of tribunal, judicial review; Confidentiality.** The award rendered by the arbitrator shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction, and any court where a party or its assets is located (to whose jurisdiction the parties consent for the purposes of enforcing the award). There shall be one arbitrator agreed to by the parties within twenty (20) days of receipt by respondent of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules. Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of both parties, unless to protect or pursue a legal right.

iii. **Waiver of Litigation; Jury Trial.** BOTH PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS A TRANSACTION INVOLVING INTERSTATE COMMERCE, AND IS THEREFORE GOVERNED BY THE FEDERAL ARBITRATION ACT. BY AGREEING TO ARBITRATION, BOTH PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT INCLUDING ANY RIGHT TO A JURY TRIAL.

iv. **Location of Arbitration.** UNLESS YOU AND WE OTHERWISE MUTUALLY AGREE, ALL HEARINGS UNDER SUCH ARBITRATION SHALL TAKE PLACE IN THE COUNTY OF POLK, STATE OF IOWA. THE PARTIES AGREE THAT ALL CLAIMS SHALL BE TREATED INDIVIDUALLY AND THERE SHALL BE NO CONSOLIDATION OF CLAIMS, CLASS ACTIONS, REPRESENTATIVE ACTIONS OR PRIVATE ATTORNEY GENERAL ACTIONS. THINIX EXPRESSLY REJECTS AND DOES NOT CONSENT TO ANY CONSOLIDATION OF CLAIMS OR CLASS ACTION IN THE ARBITRATION. THIS ARBITRATION PROVISION SURVIVES THE TERMINATION OF THE AGREEMENT.

v. **Choice of Law.** The Agreement and all related documents, and all matters arising out of or relating to the Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Iowa (without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Iowa).

- vi. **Counterparts.** Any portion of the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

[End of Terms and Conditions]