



## Akative Service Agreement & Terms and Conditions

Effective Date: March 10, 2025

Last Updated: November 14, 2025

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### Overview:

This document contains both the Akative Service Agreement and the Terms and Conditions. These two agreements outline the service details as well as the terms and conditions governing the use of services provided by Akative. In the event of overlapping or conflicting provisions, the Akative Service Agreement shall prevail over the Terms and Conditions.

By accessing or using our services, you acknowledge that you have read, understood, and agree to be bound by both the Akative Service Agreement and the Terms and Conditions.

This agreement is subject to change. Please refer to the following for the most current version:

<https://www.akative.com/service-agreement-terms-and-conditions/>.

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### Akative

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Akative.com

# Akative Service Agreement – Customer

**Last Revised: November 14, 2025**

**The below terms apply to connectivity and monitoring services provided by Akative. By signing this contract, you are subject to the following terms:**

A 36-month agreement applies to all services unless otherwise noted. Unless otherwise noted, a \$4.95 fee applies to each invoice generated when customer is not setup for automatic payments with credit card or ACH.

You agree to our Terms and Conditions listed here: <https://www.akative.com/Internet-terms-of-service> and which is attached to this quote. Matters not explicitly addressed herein shall be governed by the Terms and Conditions, with this Service Agreement prevailing in the event of any conflicting provisions.

## **Connectivity Services With Akative Provided Hardware (if applicable):**

1. RocketFailover, AkativeSD, InternetAnywhere, and VitalConnectivity plans include basic cellular router remote support, including basic configuration changes and remote updates.
2. Selected monthly cellular data (GB/Month) per connection.
3. AkativeSD and VitalConnectivity plans include a Cloud VPN with 1 TB/year of throughput unless otherwise noted.
4. A static, public IP address is provided with connectivity plans as needed and allowed by carrier. Your selected service plan may charge a fee for the static IP; please see your service plan for details.
5. All plans include our Live-In-Five™ assisted remote installation/activation.
6. Purchased, leased-to-own, and leased devices from Akative/Thinix/RDI are only designed to work with the Akative connectivity/Internet service and are not compatible with a different service provider.

## **SIM-Only Connectivity (if applicable):**

1. SIM-Only is subject to a monthly line fee that ranges in cost depending on selected carrier. Monthly line fee costs start at \$5/line. Line fees cannot be prorated and are billed in whole month increments only. Data is not included in the line fee.
2. SIM-Only is subject to a \$25/line one-time setup/activation fee plus any shipping and taxes incurred.
3. SIM-Only plans are limited to 1 carrier per line and cannot change carriers. Should a different carrier be needed, a new line will need to be purchased and a new setup fee will apply.
4. SIM-Only plans do not have any data usage protections/rules and you are responsible for all data used and any overages accrued.
5. SIM-Only plans do not include a cellular device, configurations, hardware warranty, or device support and updates. The customer is responsible for providing and maintaining their own compatible cellular device. Akative is not responsible for device configurations/setup and carrier certification/compatibility, and cannot guarantee the quality/performance of failover/connectivity service provided.
6. Akative does not support non-Akative devices and is not responsible for uncontrolled data consumption due to failover device/firewall/network misconfigurations or improper setup/installation. Overages will apply for situations of uncontrolled data consumption.
7. Included support for SIM-Only connectivity plans is for data usage and billing only. It does not include troubleshooting of any type (labor billed separately).

## **Included With Monitoring Services (if applicable):**

1. iStatus Essentials, Professional, and Enterprise+ services include:
  - a. Basic remote support with basic configuration changes and remote updates.
  - b. iStatus Probe and access to the iStatus Monitoring Dashboard - Cloud SaaS Management platform, apps, and alerts.
2. iStatus Starter services include data usage monitoring and alerts only.
3. Without iStatus Essentials, Professional, or Enterprise+, Akative is unable to provide additional data/connectivity information including, but not limited to: signal strength, service availability, carrier

coverage verification, speed, device issues, failover connections status (on/off, active/inactive, etc.), and connectivity issues.

4. All plans include our Live-In-Five™ assisted remote installation/activation.
5. All monthly or prepaid monitoring services (whether used in whole or in part) are non-refundable and do not roll forward.

#### **Data Services (if applicable):**

1. Data services are provided via carrier best-effort. Best-effort in data services means the carrier will strive to deliver the best available performance, but does not guarantee specific speeds, reliability, or quality of service. Akative shall not be held liable for carrier best-effort.
2. Data services are subject to hardware compatibility and carrier coverage areas. Akative performs a carrier coverage verification test at the time of deployment. At anytime, if carrier changes are needed, charges may apply and you authorize Akative to adjust your monthly billing rate accordingly.
3. Akative provides data usage alerts. Due to the lag time from the carriers, data usage alerts may be 48-72+ hours behind, and thus Akative cannot guarantee timely data usage alerts. Customers should be aware of these factors and should use cellular data accordingly.
4. Data speed is specified by some carriers up to the 'Priority Data Threshold' and is not guaranteed. Data above the 'Priority Data Threshold' is based on best effort and may be deprioritized if cellular networks are congested.
5. If the selected data plan is not sufficient, the customer may purchase additional data, upgrade to an unlimited data plan, or purchase a multi-SIM option with another line(s) of data; contact Akative sales for details.
6. Akative is not responsible for data usage over the failover/cellular device. If usage exceed the prepaid data amount, overage rates will apply. To minimize costs, Akative recommends limiting traffic to essential business needs.
7. Data usage is used and billed in whole GBs per line. Any partial GB(s) per line will automatically round up to the nearest whole GB.
8. If data usage is high, Akative reserves the right to do mid-cycle billings with the on-file payment method.
9. Only data usage services are being provided by Akative and any SMS or non-data usage are not a promised function. If SMS or non-data usage is used, they are subject to additional fees.
10. All devices will use cellular data to maintain an active connection and for updates/monitoring/support, so not all data is available for customer use.
11. In the event that the selected carrier plan is discontinued, Akative reserves the right to transition your service to the next most comparable plan available. Please be advised that this may result in changes to pricing.
12. Any unused data from the selected plan does not carry over to the next month nor is it refundable.
13. Akative's Open Internet Disclosure, outlining our network management practices, performance characteristics, and commitment to transparency, is available for review at: <https://www.akative.com/open-internet-statement>.

#### **Akative High-Usage & Unlimited Data Plans (if applicable):**

1. [Red Nationwide High-Usage Plans] Each Red Nationwide High-Usage Plans has a specified 'Priority Data Threshold' and 'High Priority Data' with a 'Overage Protection Threshold' (data cap) of 300 GB/month. Once the Priority Data Threshold is reached, the speed is deprioritized by the carrier and data throughput is based on best effort, determined by cellular traffic (load) and other factors.
2. [Red Ultra Wideband 5G™ Plans] Red Ultra Wideband 5G Plans have no overages or data thresholds and uses speeds up to the max speed indicated for the selected plan. These plans are only available for fixed locations within the carrier's coverage area and require a 5G compatible device to work.
3. [Purple Regional Unlimited™ Plans] Purple Regional Unlimited™ Plans have no data overages and use the fastest speeds available until the selected monthly 'Priority Data Threshold' is reached. Once the 'Priority DataThreshold' is reached, the speed is rate limited to a maximum of 1.5 Mbps for the remaining time in the current billing cycle. These plans are available in carrier's home coverage area only.
4. [Blue Nationwide High-Usage Plans] Blue Nationwide High-Usage Plans are intended for business-use only. Plans may not be used for continuous streaming of video surveillance or monitoring (manned or unmanned). Plans do not allow access to entertainment and other non-business websites that offer video or audio streaming services and may not be used for entertainment, audio streaming, web hosting, or

public or guest WiFi. 100 Mbps 'Maximum Data Speed' requires a device with a Category 18 or higher modem. Actual speed varies. Maximum speeds not always available everywhere or at all times. Once the Priority Data Threshold is reached, the speed is deprioritized by the carrier and data throughput is based on best effort, determined by cellular traffic (load) and other factors.

#### **Data Overages & Caps (if applicable):**

1. Overage charges can be incurred for all data plans (unless otherwise stated). Your overage rate is quoted on your initial service agreement. If no overage rate is specified, the default rate of \$15.00/GB applies for any data exceeding the prepaid allotment. Overages are always billed in whole GB per line.
2. The Red Nationwide High-Usage and Blue Nationwide High Usage Plans are capped at 300 GB/month. If the cap is reached, data service is automatically shut off for the remainder of the current billing cycle. Data service will automatically resume at the start of the next billing cycle. In the event that the data plan is not capped, overage charges can be incurred for use above 300 GB/month and are billed at a rate of \$4.00/GB in 5 GB increments.
3. Red Ultra Wideband 5G Plans and Purple Regional Unlimited Plans have no overage costs.
4. Overage charges can be incurred for Cloud VPN plans and are billed at a rate of \$50/TB/year per each additional TB used. (Bills in whole TB)
5. Unless otherwise noted: all MB plans are capped at 5 GB, 1 GB/mo. plans are capped at 20 GB/mo., 2 GB/mo plans are capped at 40 GB/mo., and all other data plan amounts (excluding unlimited plans) are capped at 50 GB/mo. If the cap is reached, data service is automatically shut off for the remainder of that billing cycle. Data service will automatically resume at the start of the next billing cycle and data cap will also reset.
6. With authorization, Akative can alter the data cap. Any outstanding accounts must be current prior to increasing the data cap.
7. At Akative's sole discretion, cellular data usage may be discontinued to accounts that have significant usage or unpaid charges.

#### **Data Pooling (if applicable):**

1. Data plans must be provided by Akative, have like service, and be centrally invoiced in order for pooling to occur among connections.
2. All high-usage and unlimited data plans are priced on a per-line basis and thus excluded from data pooling.
3. Data overages are possible with pooled data service and are billed per additional whole GB.
4. Organizations may have a mix of pooled and non-pooled data plans with Akative and billed accordingly.

#### **Firewall Configuration & Support (if applicable):**

1. For Customer-provided firewalls, Akative offers initial firewall configuration guides and basic remote configuration support for failover service installation. This support specifically focuses on configuring the firewall to function with the failover device and only covers this functionality. If Akative completes your firewall configuration for you, you will be billed accordingly. Additional assistance/support with traffic routing, VPN tunnels, firewall rules, and policies will also be subject to Akative's standard hourly support rate.
  - a. For Customer-provided firewalls, Akative does not provide ongoing firewall support or maintenance. Akative is not liable or responsible for the accuracy of initial configurations performed by the customer or the customer's MSP. Akative is not liable for misconfigurations, policy/rule changes, or network/traffic alterations on the customer's firewall that impact the functionality of Akative's services. If Customer provides own firewall, Akative is not liable for data usage resulting from firewall configurations.
2. For Akative solutions utilizing an Akative-provided firewall, only basic firewall configuration, service, and ongoing support are explicitly provided for the function of Akative's failover solutions.
  - a. **Firewall Configurations:** Basic firewall configurations are only for the initial setup of fundamental rules and policies, initial failover traffic routing, and the specified security suite features (Basic or Total Security). Any changes to the above items outside of the initial setup are subject to Akative's standard hourly support rate.

- **Basic Security Suite** features (as they may impact failover service) are defined as: intrusion prevention, URL filtering, gateway antivirus, network discovery, spam prevention, and application control.
- **Total Security Suite** features (as they may impact failover service) are defined as: intrusion prevention, URL filtering, gateway antivirus, network discovery, spam prevention, application control, APT blocker, threat detection and response, DNSWatch, data loss prevention, access portal, and IntelligentAV Antivirus.

All other configurations are considered advanced configurations and will be billed at Akative's standard hourly support rate. Advanced configurations and/or custom configurations include but are not limited to: VPNs, network segmentation, site-to-site configuration, traffic blocking, application troubleshooting, advanced certificates, and any security features that are not included in your selected security suite.

- b. **Firewall Service:** Depending on network needs, some WatchGuard firewall services/features may be included but not activated/utilized. Firewall services include the aforementioned selected security suite features, as well as packet filtering, stateful inspection, Access Control Lists (ACLs), Network Address Translation (NAT), and offsite logging (30 day retention). Advanced services and/or custom services, such as application layer filtering or PCI scanning, falls outside the scope of Akative's basic firewall services and will be billed at Akative's standard hourly support rate.
  - c. **Firewall Support:** Basic firewall ongoing support only includes Akative's implementation of firewall updates and patches, and minimal firewall rules/policies upkeep. Any additional Tier 1, 2, & 3 support requirements, configuration changes outside of the initial setup, and anything not listed or defined here are subject to Akative's standard hourly support rate.
  - d. **Firewall Access:** Regarding operational security, Akative does not share management credentials or allow access to Akative-provided firewalls with anyone outside of the authorized Akative support team. For policy/rule changes, please request changes via your iStatus support feature or email [support@akative.com](mailto:support@akative.com).
3. **Akative services provided do not include compliance reporting, auditing, or any other services that require specialized knowledge or expertise beyond the scope of the Services as described in this agreement. If such services are required, Akative may provide them at an additional cost, billed at a determined hourly rate.**

#### Hardware Licenses & Warranty:

1. All hardware (purchased, leased-to-own, or leased) is subject to all Akative service terms.
2. The hardware bundle line cost reflects all devices + basic configurations + term length license costs + any a la carte items.
3. Any unauthorized separation or modification of the Akative service components violates this Agreement and may impair the functionality of the solution. Such actions may result in penalties, including but not limited to: termination of service, forfeiture of warranties, and/or additional charges.
  - a. **Factory Reset:** Should the Customer factory reset any Akative hardware/service components, Akative shall not be liable for any resulting service impairment, loss of functionality, or performance issues. Reconfiguration or restoration of such services by Akative may incur additional charges to the Customer.
4. Cellular devices include a 1 year limited manufacturer's hardware warranty and are subject to annual device license fees outside of the Akative agreement. If manufacturer's hardware warranty does not cover device-swap/replacement, customer is subject to costs outside of this agreement.
  - a. For device swaps, customer will pay return shipping and any price differences for the new device. Customer also assumes responsibility for any device swap configuration and labor.
5. Limited manufacturer's warranty does not cover if device is destroyed, lost, or otherwise rendered inoperable. Customer assumes the responsibility of new hardware replacement at Akative's discretion for inoperable devices.
6. For the duration of services/active deployment, all Akative managed devices require annual licenses for proper functionality, updates/configurations, and management. License renewal is not optional for continued services. Annual licenses include but are not limited to licenses for device management, remote manager, and any firewall licensing.

7. Annual licenses automatically renew at term expiration in 1 year increments. License costs may range from \$30/year to \$300+/year depending on vendor, device, and license type and are subject to change. Akative will automatically bill customers 60 days in advance for renewal fees. By renewing, customer agrees to continue services with Akative for another year. By renewing, the customer agrees to continue services with Akative for another year. Service may be immediately suspended or terminated if a payment is rejected or the required license renewal is not completed by the service renewal date, and the customer agrees that Akative is not liable for any resulting service disruption.
8. All licensing is nontransferable and nonrefundable.
9. Device lifespans are determined by the manufacturer and typically range 4-7 years. Akative recommends upgrading devices before they reach End of Life (EOL) to ensure uninterrupted service and security. EOL devices are not covered by manufacturer warranties and may not be supported by Akative. Customer agrees to be solely responsible for replacing EOL devices. Akative is not liable for any security breaches resulting from EOL devices.

### Akative Billing Service Terms:

1. Taxes, shipping, handling, and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.
2. The length of your agreement term is based on the months you are actively receiving service (suspended months do not count toward agreement term length).
3. You agree to pro-rated billing for initial set-up and ongoing service.
4. Partial months when adding will be prorated, when possible, based on the number of days lines are in-service.
5. You authorize Akative to bill you 30-60 days in advance for the term of your contract for your monthly service fees and any additional charges that are incurred as a result of your use of the Akative services.
6. By signing, you agree to Akative's evergreen services, which continue until canceled with a written 30-day notice. Upon expiration of the initial service term, Akative services automatically renew in one-year continuation agreements. Automatic renewals are subject to price increases and early termination fees. Continued use of services (in whole or part) past the initial service term, or any renewal, constitutes acceptance of Akative's then-current service terms and conditions.
7. [For Akative-owned/leased equipment] You, the Customer, shall pay the specified lease amount (the "Lease Payment") for the use of the hardware and required hardware licensing for the full term of the associated services. This obligation remains in effect for the entire service period, irrespective of the hardware's operational status or its manufacturer-designated end-of-life (EOL) status. By renewing, the customer agrees to continue services with Akative for another year. Service may be immediately suspended or terminated if a payment is rejected or the required lease renewal is not completed by the service renewal date, and the customer agrees that Akative is not liable for any resulting service disruption.
  - a. **Monthly Leases:** Lease Payments are billed 30-60 days in advance with your monthly service fees and continue concurrently with the monthly service agreement until the service is formally cancelled per the Cancellation Policy below.
  - b. **Annual Leases:** Following the initial term covered by the Upfront Lease Payment, subsequent lease payments shall be billed annually. Annual Lease Payments are billed 60 days in advance of the service renewal date. Payment of the Annual Lease Renewal Invoice by Customer constitutes a binding agreement and formal acceptance to renew the associated services and hardware lease for an additional 1 year term.
8. Services continued past the initial service term are subject to rate increases of 5% or the current COLA adjustment, whichever is greater. Akative reserves the right to assess fees for continued services.
9. Any unused data, iStatus features, or other monthly services included in the selected solution by the customer is nonrefundable.
10. Your plan has an early termination fee. See the cancellation and return policy.
11. Late payments are subject to a \$10.00 minimum fee for each late payment.

### Cancellation & Return Policy:

1. Akative offers a 30-day satisfaction guarantee. Customers may cancel service within 30 days with written notice without contract penalties and are subject to a restocking fee of \$200-\$500. Upon canceling, customer is responsible for returning equipment in original condition within 10 days to be eligible for a

refund, minus any data usage and a restocking fee. Equipment returned after the 10 days, is exempt from refunds.

2. You may cancel Akative services in whole or in part with a 30-day prior written notice. Early termination fees apply to all Akative provided services. Early-term fees are equal to \$250 per location/line or 50% of the remaining agreement length per location/line, whichever is greater.
3. Early cancellation of an agreement may break provided discount/promotional conditions. If any discount/promotional conditions are not met, the customer will forfeit the discount/promotion. Additionally, Akative reserves the right to recover any discounts already applied.
4. [For Akative-owned/leased equipment] You, the customer, are responsible for returning all leased equipment within 10 days of service termination at your own expense. Equipment must be returned in good, working order to avoid replacement equipment charges. If you are assessed replacement charges, and the equipment is returned after the 10-day window, no refund will be issued.
5. [For financed equipment] Akative partners with Ascentium to offer a lease-to-own financing, subject to credit approval. Financing is a separate agreement between you and Ascentium. Full equipment cost is due upon cancellation of financed equipment. Monthly services and data fees are still payable to Akative.

### 3<sup>rd</sup> Party Disclaimer

Akative's services may involve the use of third-party licensing, hardware, or tools that are not developed or manufactured by Akative. These components are provided and managed by Akative on an "as-is" basis. While Akative may offer implementation, configuration, and support for these third-party services, Akative does not guarantee their performance or security. Akative shall not be held liable for data breaches, account compromises, system failures, or any other losses arising from the use or malfunction of third-party software or services, including—but not limited to—network downtime, cyberattacks, or other external threats. The client agrees to indemnify and hold Akative harmless from any claims, damages, or losses resulting from such incidents. Additionally, Akative will not be liable for any failure or delay in the performance of its obligations due to events beyond its reasonable control. This includes, but is not limited to, acts of God, natural disasters, wars, strikes, labor disputes, governmental actions, or other force majeure events. The client agrees to release Akative from any and all claims, damages, or losses resulting from such circumstances.

**ATTENTION:** Akative reserves the right to suspend services whenever you exceed your monthly plan. If for some reason you expect to have unusually high data usage please call us at 1-866-950-3392 to discuss options available to you.

Akative reserves the right to change, modify, add, or remove portions of this Agreement at any time. Akative may provide reasonable notice and the most current version of this Agreement may be found at <https://www.akative.com/service-agreement-terms-and-conditions/>. Your continued use of the Akative services represents your assent and agreement to such changes.

Akative Service Agreement V1.0012

## Terms and Conditions

**Last Revised: March 10, 2025**

1. **Introduction.** These are the Terms and Conditions for Akative/Thinix Service between the customer (“you”) and R & D Industries, Inc. (RDI) d.b.a. Akative, and d.b.a. Thinix (hereinafter collectively referred to as “Provider”, “we”, or “us”). “Service” refers to the internet access services, system monitoring services, data services, equipment rental services or any other product or service that you purchase from Provider, which in each case is described in a proposal fully signed by you and Provider (the “Proposal”). Your “Agreement” with us for the Services includes each of the following documents: (a) these Terms and Conditions, and (b) the Proposal. Provider 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, unless specifically indicated differently in the Proposal, the Service will continue on a month to month basis with a thirty-two percent (32%) premium added to the monthly cost, until either the Service is terminated in a manner as provided below or a new agreement is executed.
  - b. **Termination.**
    - i. You may terminate the Agreement between the parties or all or a portion of your Services at any time by notifying Provider. Termination by you shall be effective immediately unless you request a later termination date. Where applicable, your monthly recurring Services and the applicable charges for those monthly recurring Services shall be prorated to coincide with the termination date. Similarly, (where applicable) any portion of the terminated Service that has a specified monthly allotment 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. Not all Services are eligible for prorate (i.e. cellular data, subscriptions, licensing, etc.).
    - ii. Provider 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) Provider ceases to provide such Service in your area. Termination by Provider 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) Provider ceasing to provide that Service in your area, Provider 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 Provider’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.
- g. **Restocking Fee.** Should you cancel an order, Provider may, at our sole discretion and in lieu of an ETF, charge you a restocking fee up to a maximum of the full one-time non-recurring price of the Services; and additionally any costs for recurring Services already provided to you.

#### 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 Provider-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 Provider'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 Provider 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. We reserve 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 Provider with your consumer report. You authorize us to periodically disclose your account information and payment history to consumer reporting agencies. You authorize third party agents or resellers of the Provider service to receive notice of decisions made from a review of your consumer credit report.
- d. **Initial Fee; Deposits.** Without limiting the foregoing, Provider 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 Provider before we shall be obligated to deliver any Equipment to you or begin delivery of any applicable Service. Provider 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 Provider. We 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 Provider 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 \$10.00 per occurrence. In addition to all other remedies available under this Agreement or at law (which Provider does not waive by the exercise of any rights hereunder), we 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 Provider for its costs, including reasonable attorneys' fees, collection fees and similar expenses incurred by Provider 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 PROVIDER 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 Provider. We 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 Provider can recover under applicable law. Except where a Proposal indicates that Provider 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 Provider) 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 Provider 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 Provider 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 email us at [support@akative.com](mailto:support@akative.com) or [support@thinix.com](mailto:support@thinix.com), or at such

other telephone number or email address as may be set forth on our website at [www.Akative.com](http://www.Akative.com) or [www.Thinix.com](http://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 Provider 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 Provider 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 PROVIDER NOR ANY OTHER PERSON ON BEHALF OF PROVIDER 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 PROVIDER, OR ANY OTHER PERSON ON PROVIDER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THESE TERMS AND CONDITIONS AND ANY APPLICABLE PROPOSAL.

b. EXCEPT AS OTHERWISE PROVIDED HEREIN, PROVIDER 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 Provider 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 Provider Service, we 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 Provider'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 Provider Service and compliance and performance in accordance with all other terms and conditions of all portions of the Agreement, Provider hereby authorizes you to access and use, during the Term of the Provider 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 Provider Services or iStatus Software.
  - ii. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Provider 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 Provider Services or iStatus Software, in whole or in part.
  - iv. Bypass or breach any security device or protection used by the Provider 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 Provider'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 Provider Service or any other services offered by Provider.
  - 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 Provider Services or iStatus Software, including any copy thereof.
  - vii. Access or use the Provider 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 Provider Services or iStatus Software for purposes of competitive analysis of the Provider 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 Provider 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 Provider 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 Provider 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 Provider Services are described in the Proposal.
  - f. **Scheduled Downtime.** We will use commercially reasonable efforts to schedule routine maintenance of the Provider 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 Provider 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 Provider 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.** We make no warranties or guarantees regarding the Provider Service's service levels or interconnectivity with the internet.
12. **Network Security.** Provider makes no warranty regarding the security of the network and any labor or material costs related to the remediation of cyber security events shall be your sole responsibility.
13. **Compliance with Laws.** You agree to comply with applicable laws with respect to your use of the Provider Service. You agree not to use the Provider 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 Provider Service or any other services offered by Provider, or that encourages the committing of any criminal offense. You agree you won't use the Provider 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 Provider Service, or in violation of the third party licenses, policies, or rules.
14. **Independent Engagement and Non-Hire.** Because employees are one of our most valuable assets, policy and professional ethics require that our employees not seek employment with, or be offered employment by you during the length of this Agreement and for a period of three (3) years thereafter. Your signature on this document confirms your organizations agreement to adhere to this professional standard of conduct. You acknowledges that Provider is involved in a highly strategic and competitive business. You further acknowledge that you would gain substantial benefit and that Provider would be deprived of such benefit, if you were to directly or indirectly hire any personnel employed by Akative or Thinix. You agree that you will not, without the prior written consent of Provider, solicit the employment of current or former Akative or Thinix personnel during the term of this Agreement and for a period of three (3) years following expiration of this Agreement. You further agree that Provider damages resulting from breach by you of this provision would be impracticable and that it would be extremely difficult to ascertain the actual amount of damages. Therefore, in the event you violate this provision, you shall immediately pay us an amount equal to 250% of the employee's total annual Provider compensation as liquidated damages and Provider shall have the option to terminate this Agreement without further notice or liability to you. The amount of the liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs Provider would incur to identify, recruit, hire and train suitable replacements for such

personnel. You agree that should the non-hire portion of this agreement be invalidated by any Court or agreement, that you shall still pay all liquidated damages owed to Provider.

#### 15. Limitation of Liability.

- a. IN NO EVENT SHALL PROVIDER 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 PROVIDER 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.

16. **Force Majeure.** Provider 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 Provider 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**").

17. **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 [here](#) 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 **our respective Provider website(s)**. Your continued use of the Services represents your assent and agreement to such privacy policy.

18. **Changes of Document.** Provider reserves the right to change, modify, add, or remove portions of this Terms and Conditions at any time. Provider may provide reasonable notice and may provide the current version of Terms and Conditions upon request. Your continued use of the Services represents your assent and agreement to such changes.

#### 19. 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 us, all notices to be delivered in connection with the Agreement must be sent to us at Attn: Akative or Thinix, 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. PROVIDER 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]

Terms and Conditions V1.0003